

Protect Your Business—Prevent Penalties



# Restaurants

Department of Industrial Relations  
Labor Enforcement Task Force (LETF)

2022

**A**s a restaurant business owner, you have a lot on your plate. You earn a living, provide jobs, and help build communities. When you understand and comply with labor laws, you protect the investment you have made, promote a positive image, and avoid paying penalties.

Through the Labor Enforcement Task Force (LETF), under the direction of the Department of Industrial Relations, California labor agencies work together to make sure employers are following labor, safety and health, licensing, and payroll tax laws. LETF can help you understand which laws apply to you and how to comply. LETF also inspects businesses and cites employers if violations are found.

# PENALTIES

**NOT following the law will hurt your business.**

Here are some examples of the kinds of penalties you would owe your workers and state agencies.

| <b>IFYOU:</b>   | <b>YOU WOULD OWE:</b>  |
|---|--|
| <b>Misclassify employees as independent contractors</b>                               | Fines of \$5,000 to \$25,000 per violation, plus unpaid payroll taxes                    |
| <b>Fail to pay the minimum wage or overtime; fail to provide rest and meal breaks</b> | All wages owed, plus penalties   |
| <b>Fail to provide a pay stub</b>   | \$250 per employee each time they are paid   |
| <b>Violate health and safety rules</b>  | Up to \$25,000 for each serious violation and a possible shutdown of operating equipment |
| <b>Punish or retaliate against workers</b>  | All wages owed, a fine of up to \$10,000 per employee, and workers get their jobs back   |
| <b>Fail to have workers' compensation insurance</b>                                   | At least \$1,500 per employee, and no one can work until all workers are covered         |

**TOTAL:**

**NOT WORTH  
THE RISK!**

In some cases, criminal charges may be filed. You may serve up to 10 years in jail.

## **Restaurant pays \$70,000 to settle wage charges**

Cal/OSHA, the state workplace health and safety agency, cited a California restaurant for a number of health and safety problems. The state Labor Commissioner then looked into possible wage and hour violations.

Eight workers came forward to file claims against the restaurant. The Commissioner's office found that the employer had not paid minimum wage or overtime and had not provided breaks.

The case was settled in the workers' favor. The restaurant had to fix safety problems and pay \$70,000 in penalties and unpaid wages.

*Note: This example reflects a typical scenario.*

In 2019, restaurants inspected by LETF were assessed more than \$2 million in initial penalties. This brochure describes some of the common problems LETF inspectors find in restaurants. It also lists where you can get help.

Pay at least  
minimum wage  
and overtime  
for extra hours

Allow workers  
to bring up  
concerns  
without  
punishing them

Provide a  
workplace free  
of discrimination  
and harassment

As an employer,  
some of your

**KEY  
RESPONSIBILITIES**

are to:

Have workers'  
compensation  
insurance

Provide a safe  
workplace

Pay all payroll  
taxes and keep  
records of  
employees and  
contractors

Give rest and  
meal breaks

# Problems LETF finds in restaurants

## Employee Hiring

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Restaurant employers are often cited for:

1 Misclassifying employees as independent contractors.

In September 2019, Governor Newsom signed Assembly Bill (AB) 5 into law. The law addresses the “employment status” of workers when they are claimed to be an independent contractor and not an employee. For more information, visit the Employment Status Portal: <https://www.labor.ca.gov/employmentstatus/>.

2 Not keeping all required records.

You must keep records of all your employees for the past four years. They should include name, address, job type, and last four digits of the Social Security number. For minors under 18, you must list their date of birth.

## Wages and Breaks

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Restaurant employers are often cited for:

1 Not paying workers the wages they are owed.

- You must pay at least minimum wage for all hours worked. If the city where you are working or the federal government has a higher minimum wage than the state, then you must pay whichever of those rates is the highest. For minimum wage rates, see below
- You must pay overtime (1 1/2 times the regular rate of pay) and double-time (twice the regular rate of pay) according to the rules stated in Industrial Wage Commission Order No. 5-2001 (which must be posted at your workplace where employees can read it easily).

## 2 Counting tips toward the wages.

Tips are separate from wages. You cannot use tips as payment toward minimum wage. For example, you cannot pay \$6 per hour and use a worker's tips to reach the minimum wage.

## 3 Not allowing rest or meal breaks.

Workers must receive:

- A paid 10-minute rest break for every 4 hours of work.
- An unpaid meal break of at least 30 minutes if they work more than 5 hours. (An employee can agree to skip meal breaks if the workday is 6 hours or less.)

## 4 Not giving pay stubs or not paying payroll tax.

You must give out pay stubs, list the deductions, and pay payroll tax. For each pay period, keep records of work hours and amounts paid to each worker.

Visit: [www.dir.ca.gov/dlse/DLSE-FAQs.htm](http://www.dir.ca.gov/dlse/DLSE-FAQs.htm) for more information on all the items that must be included in a wage stub.

# Health and Safety

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## Restaurant employers are often cited for:

### I Not complying with the following regulations:

- § 3273 (a). Permanent floors and platforms shall be free of dangerous projections or obstruction, maintained in good repair, and reasonably free of oil, grease, or water.
- § 4650 (e). Compressed gas cylinders shall be stored or transported in a manner to prevent them from creating a hazard by tipping, falling, or rolling.
- § 5194 (e). Establish a written Hazard Communication Program
- § 3400 (c). There shall be adequate first-aid materials readily available.

Many hazards have specific regulations that describe what an employer must do to protect workers. These are called Title 8 Safety Orders, such as those listed above, and you can find them here: [www.dir.ca.gov/samples/search/query.htm](http://www.dir.ca.gov/samples/search/query.htm).

- 2 Not providing the equipment, tools, or protective clothing that workers need to work safely.
- 3 Lacking a proper safety plan (Injury and Illness Prevention Program or IIPP).

You must have a written plan to identify hazards and protect workers. You must also have a way for workers to make suggestions without threat of being fired or punished.

- 4 Poor records of training.

Safety training must be in a language that workers understand. Keep records that include date, type of training, name of trainer, and names of workers who attended. You must pay workers for the time they spend in training.



# Retaliation is illegal

Employers can be required to reinstate fired employees, pay employees' lost wages, and pay fines up to \$10,000 per employee if they punish or fire workers for:

- **Speaking up** about wages that are owed to them
- **Reporting** an injury or a health and safety hazard
- **Filing** a claim or complaint with a government agency.

**It is illegal for employers to threaten or retaliate against workers in any way.**

For example, employers cannot:

- **Threaten** workers with deportation
- **Punish** workers with undesirable tasks
- **Fire** workers or send them home
- **Prevent** workers from getting a different job.

You do not have to agree with the workers. If you are complying with labor laws, you do not have to make the changes that are being requested. But everyone benefits when workers feel safe enough to bring up concerns. Listen to your employees and involve them in coming up with solutions that work for everyone.

## Stay up to date with new labor laws

Below are some resources to help you stay updated and comply with important recent changes to labor laws:

- **Paid Sick Leave.** Employers must do several things to comply with the Healthy Workplace Health Family Act; visit [www.dir.ca.gov/DLSE/ab1522.html](http://www.dir.ca.gov/DLSE/ab1522.html).

## Schedule for California Minimum Wage Rate, 2020–2023

| <b>Date</b>     | <b>Minimum wage for employers with 25 employees or less</b> | <b>Minimum wage for employers with 26 employees or more</b> |
|-----------------|---|---|
| January 1, 2020 | \$12.00/hour  | \$13.00/hour  |
| January 1, 2021 | \$13.00/hour  | \$14.00/hour  |
| January 1, 2022 | \$14.00/hour  | \$15.00/hour  |
| January 1, 2023 | \$15.00/hour  |   |

# Where to Get Help

There are resources that can help you understand which laws apply to you and how to comply.

## LETF

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Call the Labor Enforcement Task Force (LETF) toll free at 855-297-5322 or go to [www.dir.ca.gov/letf](http://www.dir.ca.gov/letf).

## Cal/OSHA

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Call Cal/OSHA Consultation at **800-963-9424** or go to [www.dir.ca.gov/dosh/consultation.html](http://www.dir.ca.gov/dosh/consultation.html).

Consultation Services provides free health and safety consultation to employers. Consultation Services is separate from the Cal/OSHA Enforcement Branch. All your communications with Consultation Services are confidential.

- To improve your safety plan, Cal/OSHA offers a template for a restaurant Injury and Illness Prevention Program.
- Go to [www.dir.ca.gov/samples/search/query.htm](http://www.dir.ca.gov/samples/search/query.htm) to find regulations about specific hazards (Title 8 standards).

## Other sources of help

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- Restaurant Associations
- Small Business Development Centers
- Your workers' compensation insurance broker can offer assistance, including help with developing a safety plan.
- The Governor's Office of Business and Economic Development (GO-Biz): [www.business.ca.gov](http://www.business.ca.gov)

**This booklet provides general information and is not meant to serve as legal advice. It was developed by the Department of Industrial Relations and its Labor Enforcement Task Force with assistance from the Labor Occupational Health Program at UC Berkeley.**

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