



# GUAM DEPARTMENT OF LABOR WAGE & HOUR DIVISION

## COMMON FLSA VIOLATIONS IN THE FOOD & BEVERAGE INDUSTRY

### WAGES TO BE PAID WHEN

22 GCA § 3201

Due and payable within seven (7) days of the pay period end date, except:



Employee was discharged with or without cause	Employee leaves voluntarily	Work is suspended due to a labor dispute
Due and payable the <b>same day</b>	Due and payable the next regular pay day	



### DEDUCTIONS

22 GCA § 3204

It shall be unlawful for any person to deduct and retain any part of portion of any compensation earned by any employee except where required by federal or territorial statute or by court process or when such **deductions are authorized in writing by the employee**, provided that deductions for fines may not be so authorized.

#### VOLUNTARY DEDUCTIONS **MUST BE AUTHORIZED IN WRITING!**



CASH ADVANCE

MEALS

REGISTER SHORTAGES

The cost of any items which are considered **primarily for the benefit or convenience of the employer** may not be deducted from an employee's wages if doing so would reduce the employee's earnings below the required minimum wage or overtime compensation.

Examples include damages to the employer's property by the employee or any other individuals, financial losses due to clients/customers not paying bills, and theft of the employer's property by the employee or other individuals; **this is true even if an economic loss suffered by the employer is due to the employee's negligence.**

### COMPENSABLE TIME



Work not requested, but **suffered or permitted** to be performed, is work time that must be paid for by the employer.

COMPENSABLE TIME	NON-COMPENSABLE TIME
Engaged to wait (ex. Waiting for customers to dine in)	Waiting to be engaged (ex. At home, waiting for your boss to call you into work when needed)
Pre-shift preparation	Travel from home to work
Cleanup or other job duties at the end of a shift	Lectures, Meetings & Training Programs are not counted as working time only if four criteria are met:
Meetings that are mandatory	1. Outside normal hours
Required to remain on the employer's premises/job site	2. Voluntary
	3. Not job related
	4. No other work is concurrently performed



### MAXIMUM HOURS (OVERTIME)

22 GCA § 3107 (a)

No employer shall employ any employee in **excess of forty (40) hours a week** unless such employee receives compensation for employment in excess of such weekly hours, at a **rate not less than one and one-half (1-1/2) times the regular rate** at which he is employed

Day	Date	Time In	Lunch Start	Lunch End	Time Out	Hours Worked
Sunday	4/16/2023					0.00
Monday	4/17/2023	8:00 AM	12:30 PM	1:30 PM	5:00 PM	8.00
Tuesday	4/18/2023	8:00 AM	1:00 PM	2:15 PM	5:15 PM	8.00
Wednesday	4/19/2023	8:00 AM	12:30 PM	1:30 PM	5:00 PM	8.00
Thursday	4/20/2023	9:30 AM	12:30 PM	1:30 PM	5:00 PM	6.50
Friday	4/21/2023	8:00 AM	12:30 PM	1:30 PM	5:00 PM	8.00
Saturday	4/22/2023	10:00 AM			3:15 PM	5.25
<b>TOTAL HOURS</b>						<b>43.75</b>
Regular Hours						40.00
Overtime Hours						3.75



Hourly Rate: <b>\$9.25</b>	Overtime Rate: <b>\$13.88</b>	<b>Total Gross Pay</b>
Regular Pay: <b>\$370</b>	Overtime Pay: <b>\$52.05</b>	

**NO COMPENSATORY TIME OFF ALLOWED!**

# EXEMPT VS NON-EXEMPT EMPLOYEES

22 GCA § 3108



## Exempt Employees:

- ✓ In order for exemption to apply, the employee's specific job duties and salary must meet all the requirements
- ✓ Generally paid a salary, meaning they will receive a fixed amount each pay period, regardless of the number of hours worked
- ✓ Not entitled to overtime pay

## Non-Exempt Employees:

- ✓ Must be paid at least minimum wage
- ✓ Typically paid an hourly wage, but can be paid a salary
- ✓ Entitled to overtime pay

# SERVICE CHARGE VS TIPS

## SERVICE CHARGE

- ✓ Property of the employer
- ✓ A portion can be given to employees; if so, must include the service charge as part of the employee's regular rate when calculating overtime
- ✓ Subject to employer taxes
- ✓ A fee that is added to the final bill

Tax	\$12.00
Service Charge (18.0%)	\$12.00
Total	\$6.00
Tax	\$155.50
Tip	\$10.89
Total	\$27.99

## TIPS

- ✓ Customers determine the amount to give
- ✓ No portion is to be given to the owner/business
- ✓ Distribution through tip pools is allowed
- ✓ The payment of tips is not up negotiation or dictated by the employer
- ✓ Cash tips are the responsibility of the employee to report on taxes

# RECORD KEEPING

17 GAR Labor Relations, Chapter 4, §4104. Employers' Records.

(a) Every employer shall maintain and keep records in English containing the following information and data on each employee to whom 22 GCA §3105 and §3107, as amended apply:

- (1) Name in full.
- (2) Home address.
- (3) Date of birth.
- (4) Occupation.
- (5) Rate of pay and length of pay period.
- (6) Hours worked each workday and total hours worked each workweek.
- (7) Total daily or weekly straight-time earnings or wages.
- (8) Total weekly overtime compensation.
- (9) Total additions to or deductions from wages paid each pay period.
- (10) Total wages paid each pay period, date of payment and pay period covered.

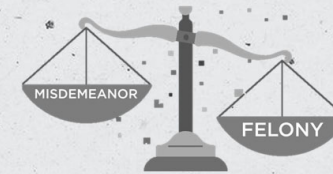
(b) Such records shall be preserved by the employer for a period of at least six (6) years.

In addition to the above, 22 GCA, Ch 3 § 3110. Record of Employees also requires employers to keep a record of an employee's:

- Social security number
- Or in the case of alien workers, the passport number



# PENALTIES



§3117. PENALTIES: COLLECTION OF UNPAID WAGES; INJUNCTIONS, ETC.

ACT	PENALTY
Employer INTENTIONALLY violates any section in Chapter 1	<b>MISDEMEANOR</b>
Employer terminates or discharges an employee because they filed a complaint	

§3211. ADDITIONAL CRIMINAL PENALTIES

ACT	PENALTY
Knowingly and materially <b>alter</b> payroll records to deprive an employee of wages rightfully due	<b>FELONY OF THE SECOND DEGREE</b>
Knowingly and materially <b>falsify</b> payroll records to deprive an employee of wages rightfully due	

GUAM DEPARTMENT OF LABOR

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