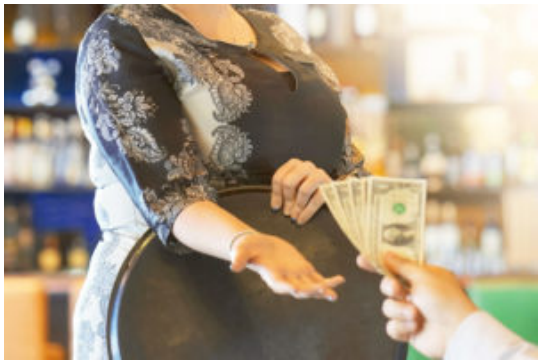
Minneapolis Restaurants Served with Six-Figure Tab For Minimum Wage and Overtime Claims

by Dennis J. Merley - Thursday, October 03, 2019



It was reported last week that fifteen different restaurants and markets on Minneapolis' popular "Eat Street" (Nicollet Ave. in South Mpls.) were cited for minimum wage and/or overtime violations by the United States Department of Labor (DOL). The final tab totaled more than $367,000.

This raises eyebrows for several reasons, not the least of which is the DOL's explanation that this enforcement action is part of a larger effort to target the hospitality industry throughout the Midwest. Thus, Minnesota's hotels, dining establishments and others in the industry appear to be directly in the DOL's cross-hairs in the coming months.

One of the establishments that the DOL cited – Black Sheep Pizza – recounted that some of their employees work at two or more of their four locations. They explained that they mistakenly believed that each such location was a separate employer that did not need to account for hours worked at the other Black Sheep sites. This of course evokes the joint employer doctrine, a critical concern lurking in the shadows for any employer with related establishments or entities.

Joint Employment

The joint employment doctrine provides that if two entities are deemed to be joint employers of an individual, the hours worked between the two establishments must be aggregated and overtime must be paid if the total exceeds 40 hours in a workweek (or 80 in a two-week pay period for qualifying health care facilities). The test for joint employment under Wage & Hour regulations is as follows:

[I]f the facts establish that the employee is employed jointly by two or more employers, i.e., that employment by one employer is not completely disassociated from employment by the other employer(s), all of the employee's work for all of the joint employers during the workweek is considered as one employment for purposes of the Act.

Unfortunately, the regulations do not specify when two entities are "not completely disassociated" from each other. Other employment-related statutes are somewhat clearer in evaluating joint employment in terms of whether there is (1) common ownership; (2) common management; (3) centralized control of employee relations; and (4) intermingling of employees. These factors would be a good place for an employer to start when evaluating whether they are jointly employing workers among their various locations.

New Test Coming?

Clarification may be on the way. As we reported in DOL's Recent Labors Produce Two Proposed Rule Changes and an Opinion Letter, the DOL has proposed a new test for evaluating when a second entity might be considered a joint employer of a particular worker. The factors are:

– Does the entity have the right to hire or fire the individual?

– Does the entity have the right to supervise and control the individual's work schedules or conditions of employment?

– Does the entity have the right to determine the individual's rate and method of payment?

– Does the entity maintain the individual's employment records?

The new rule has not been formally adopted but is likely to be in the near future.

Bottom Line

The joint employer issue can rear up for any grouping of related entities. Typical situations include medical clinics with multiple locations, a manufacturer with two or more divisions that are centrally managed, or a hospital and related long term care facility.

In fact, the two entities need not be related. Joint employment has been found, for example, where an employer and temporary employment agency share control over the individual's working conditions, and where a store and the mall in which the store is located both govern the working conditions of security personnel assigned to the location. The critical factor is the mutual control over the individual.

Employers must understand when a joint employment relationship exists and must maintain systems designed to capture all of the hours and pay obligations that arise from such an arrangement. Employers seeking not to be labeled as a joint employer should take steps to

insure that the relative rights, control and responsibilities for a particular worker are clearly spelled out and well documented between the two subject entities.

All of this is especially important at present in the hospitality industry since the DOL appears to have no reservations about singling out this particular segment of the business community.

---

220 South 6th St, Suite 2200, Minneapolis, Minnesota 55402 | info@felhaber.com | 612-339-6321 | 800-989-6321