



# California Restaurants: Put Detailed Record-Keeping on Your Menu

Employer faced a six-figure settlement after employees sued over unpaid wages

By June Bell

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**A** small restaurant chain's settlement of a lawsuit alleging wage and hour violations is a \$900,000 reminder to California businesses to painstakingly document hourly employees' breaks.

Tacolicious, which operates five restaurants in the San Francisco Bay Area, denied liability in court papers. CEO Joe Hargrave said in a statement that employees had always received meal and rest breaks and blamed "loose record-keeping" during the time when the chain initially expanded.

Tacolicious's failure to accurately record workers' hours and mandated breaks doomed any defense the company might have mounted, said Cathy Arias, an attorney with Burnham Brown in Oakland, Calif., who advises restaurant franchises on wage and hour compliance matters.

"You do find that in the restaurant industry so often," Arias said. "They just don't understand the importance of being able to document that they are complying with California wage and hour rules." She has no connection to the Tacolicious case.

A spokesperson for Jackson Lewis, which represents Tacolicious, declined to comment on the case or the settlement. An attorney with Liberation Law Group of San Francisco, the employees' counsel, also had no comment.

The settlement is pending approval from the Superior Court of California in San Francisco.

## Employers Must Document

Two Tacolicious cooks filed suit in 2015, claiming they were shorted on regular and overtime pay, didn't receive proper breaks or compensation for missed breaks, and received inaccurate pay statements. Workers eligible for compensation from the settlement include all current and former hourly staffers employed between Aug. 14, 2010, and July 11, 2016.

California businesses increase their vulnerability to wage and hour lawsuits by failing to create and maintain records supporting their compliance with the state's detailed laws requiring hourly workers to receive 10-minute rest breaks and 30-minute meal breaks at mandated intervals.

Although employers may follow those regulations to the letter, a paper trail affirming that compliance is a must.

*[SHRM members-only toolkit: [Complying with California Wage Payment and Hours of Work Laws](#) (/resourcesandtools/tools-*

and-samples/toolkits/pages/ca\_complyingwithwagepaymentandhoursofworklaws.aspx]]

"There's simply no excuse for not documenting on a daily basis the start and stop times of your employees' work," said Travis Gemoets, an attorney with Jeffer Mangels Butler & Mitchell in Los Angeles. He was not involved in the Tacolicious litigation.

Employers should regularly review time sheets of hourly workers and follow up when they find noncompliance involving meal breaks, which must be at least 30 minutes long and taken by the end of the fifth hour of work.

If workers opt to resume their duties before their break ends, Gemoets advises that management have them sign a waiver saying they returned of their own volition.

If a manager orders workers to come back early, that truncated break must be documented in a claim form, and the business must pay the employee for an extra hour of work.

Ten-minute rest breaks—which are mandated for each four-hour work period—don't require the same level of documentation, Gemoets said, but workers who are denied those pauses must also receive an hour of penalty pay.

### **Training Is Key**

Most restaurant-worker violations occur because managers receive little or no training about California's labor laws or may have a financial incentive to hold costs down, Arias said.

To protect themselves against claims of wage and hour theft, businesses that employ hourly workers must have a compliance strategy and engage in management training, she said. Effective ways to verify meal and rest breaks include the regular review of time sheets, interviews with employees, and reviews of video footage showing employee work and break areas.

Implementing these safeguards can be daunting for restaurant owners, who would likely rather focus on attracting diners, creating appetizing entrees and making a profit.

Ensuring compliance with California's myriad labor and employment regulations is likely low on their priority list. That ignorance may not be an issue when a restaurant is small, but as a business expands, it becomes more vulnerable to litigation. "The larger you get," Gemoets said, "the larger the target grows on your back."

Should violations come to light, restaurant owners must show that they take violations seriously. Arias recommends that managers be fired if they falsify work records or deny mandated breaks.

Gemoets advises businesses to use a payroll code to identify and track any penalty payments that were given to employees who didn't get a proper break.

If problems are uncovered, vowing compliance going forward is inadequate. "It's really important to fix it going backwards," Arias said. That might entail doling out an hour of pay for each violation to each affected employee, but it's "the cheapest insurance you're ever going to buy against wage and hour claims," she said—and it's a bargain compared to a six-figure class-action settlement.

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