



AT THE BAR WITH BOWDITCH

A Legal Blog for the Craft Brewing Community

Spring Cleaning Tips for Pay and Recordkeeping Compliance

BY DANIELLE JUREMA LEDERMAN • FEBRUARY 13, 2023

It is no surprise that breweries can feel overwhelmed by the numerous legal obligations and responsibilities they face on a day-to-day basis at the federal, state and local level. A good place to start – especially in an employee-friendly state like Massachusetts – is compliance with pay and recordkeeping obligations. Good recordkeeping can keep you out of trouble, so make that part of your spring cleaning goals for this year.

A variety of state and federal laws govern a brewery's duty to maintain records, including records relating to its employees. The U.S. Department of Labor's Wage and Hour Division ("WHD") is responsible for enforcing the federal law that governs minimum wage, overtime pay, recordkeeping and child labor. In Massachusetts, it is the Fair Labor Division of the Attorney General's Office ("FLD") that is responsible for enforcing these laws at the state level. Failure to keep the proper records or to pay your employees correctly can lead to hefty fines and penalties, including even double or triple the amount of actual damages.

One method that the WHD and FLD use to enforce these laws is conducting audits to confirm whether a brewery has met all of its recordkeeping and pay obligations. These audits may be random or could result directly from a complaint filed with one of these entities. An audit can involve reviewing a significant amount of your company records, often over a two- or three-year period, as well as employee interviews to allow the investigating entity to assess whether there are any violations.

In responding to an audit, the best defense is a good offense. That offense starts with knowing (and following) all applicable pay and recordkeeping laws. Here are some tips and best practices to keep in mind:

- Correctly classify your workers as employees or independent contractors at the outset
- Pay your employees at least minimum wage (\$15.00/hour in Massachusetts) for all the hours they work
- Pay your employees for all the hours they work over 40 hours in a workweek at the rate of time-and-one-half, unless the employees are exempt from overtime

- If your employees perform work at multiple pay rates in a workweek, confirm you are properly calculating any overtime earnings
- Properly classify your employees as non-exempt or exempt from overtime
- Identify whether you need to pay your employees for their travel time, time on call, work performed before or after their shift, etc.
- Know what activities can and cannot be performed by any minor workers you employ
- Ensure you have a Massachusetts work permit for any workers you employ who are under 18
- Maintain records of the hours worked and pay provided to each employee

If you have any questions, would like more information relating to your pay and recordkeeping obligations or need assistance responding to an audit, please contact your Bowditch attorney.