

A Costly Recipe: Flat-Rate Pay, Long Hours, and Retaliation Lead to DOL Consent Judgment

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Summary

Two related Framingham, MA, restaurants, Samba Steak and Sushi (Samba) and China Gourmet, and their owners entered into a consent judgment with the U.S. Department of Labor (DOL) resolving claims that they violated the Fair Labor Standards Act's (FLSA) overtime, recordkeeping, and anti-retaliation provisions.

The matter underscores several key enforcement themes:

- The DOL's increasing focus on repeat violators.
- Significant liability risk associated with paying "flat" monthly salaries to nonexempt employees who work substantial overtime.
- The DOL's aggressive stance on retaliation during investigations, including immigration-related threats and efforts to interfere with employee cooperation.

Employers should take this case as a reminder to review their pay practices, recordkeeping procedures, and protocols for responding to government investigations.

Background

The DOL alleged that the two restaurants:

- Paid workers flat monthly salaries ranging from \$2,200 to \$3,000;
- Required employees to work at least 54 hours per week, often 60 or more hours;
- Failed to pay overtime premiums for hours worked over 40 hours in a workweek; and
- Maintained inadequate and inaccurate records of hours worked.

The restaurants had previously been investigated by the DOL in 2020. That investigation resulted in pre-litigation settlements in which the restaurants agreed to pay more than \$250,000 in back wages and to comply with the FLSA going forward.

Despite those commitments, a renewed investigation in 2022 led the DOL to conclude that the restaurants continued to violate the FLSA and, in addition, Samba engaged in unlawful retaliation.

Alleged Retaliation

During the 2022 investigation, the DOL alleged that Samba and its owner took steps to discourage employee cooperation and conceal ongoing violations, including:

- **Directing employees to leave or stay away from the restaurant** on at least two occasions when the DOL investigator visited.
- **Falsely telling workers that immigration authorities were on site** when the person in the restaurant was actually a DOL investigator.
- **Requiring employees to sign false time records** that understated hours worked.
- **Demanding that workers produce Social Security cards within two weeks or be fired**, in the context of the ongoing investigation.

The DOL treated these actions as retaliation under the FLSA.

The Consent Judgment

To resolve the DOL's claims, Samba, China Gourmet, and their owners agreed to:

- **Pay \$215,000** in total overtime back wages, liquidated damages, and punitive damages.
- **Comply with the FLSA going forward**, including properly compensating overtime-eligible employees and maintaining accurate records of hours worked.

This financial obligation comes on top of the more than **\$250,000** previously paid under the 2020 settlements, placing the total financial impact for these businesses at \$465,000.

Practical Steps for Employers

In light of this consent judgment, employers — particularly in the restaurant and hospitality sectors — should consider the following actions:

1. Audit Pay Practices for Nonexempt Employees

- Confirm that all nonexempt employees who work more than 40 hours per week receive proper overtime premiums.
- Review any “flat salary” or “day rate” arrangements to ensure they comply with overtime requirements.
- Evaluate whether any positions classified as exempt truly meet both the duties and salary-basis tests.

2. Strengthen Timekeeping and Recordkeeping Systems

- Implement reliable methods for recording all hours worked (including pre- and post-shift work and off-the-clock tasks).
- Prohibit supervisors from altering time records without documented, legitimate business reasons.
- Regularly review time records for anomalies (e.g., identical hours every week or a lack of recorded overtime in roles that realistically require long hours).

3. Establish Clear Nonretaliation and Investigation Protocols

- Adopt or update written nonretaliation policies covering participation in government investigations and internal complaints.
- Train owners, managers, and supervisors on how to respond to DOL visits, including:
 - Cooperating with investigators;
 - Avoiding any suggestion that employees should not speak to investigators;

- Refraining from any comments or actions that could be perceived as threats or intimidation.
- Emphasize that employees are free to speak with investigators without approval or oversight.

4. Address Immigration-Related Risks Carefully

- Train management not to reference immigration status in connection with wage complaints or investigations.
- Ensure that any requests for documentation (such as Social Security cards or I-9 verification) are handled in a consistent, nondiscriminatory manner and are not timed to coincide with complaints or investigations.

5. Treat Repeat Issues as a Priority Compliance Matter

- If your organization has previously resolved DOL or state wage-hour investigations, ensure that any promised changes were actually implemented and are sustained.
- Conduct periodic follow-up reviews to confirm ongoing compliance, rather than treating settlement-related changes as one-time tasks.

Conclusion

This case serves as a reminder that:

- The DOL closely monitors employers it has previously investigated;
- Flat monthly pay arrangements for nonexempt employees working significant overtime are high risk; and
- Retaliation or interference with investigations can magnify liability.

If you would like assistance reviewing your overtime practices, timekeeping systems, or investigation protocols, or in developing training for managers on interacting with government investigators, we can help design a tailored compliance plan.

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