

HIGH SCORE: 2,011,000

AVOIDING PITFALLS

TIPS FROM THE EXPERTS

by Julie Maager



When you got into the restaurant business, chances are you did it for a love of good food, a fondness for people, or possibly a desire to captain your own ship as an entrepreneur. Most likely few—if any—restaurant operators entered the foodservice field because they wanted to become experts in labor law, pore over PCI compliance documents or forge an intimate relationship with the Food Code.

Luckily restaurant operators have a resource in the Wisconsin Restaurant Association for those less-appealing—but very important—aspects of running a foodservice business. The experts at WRA have your answers, from how to handle a foodborne illness complaint to how to make sure your employee tip-pool will pass IRS muster.

For this issue of *Wisconsin Restaurateur*, we talked with several of WRA's experts about some of the most common questions they receive on a variety of issues. What follows is a quick list of common questions and practical answers—a sample platter, if you will—from the WRA experts.

Labor laws

What is the top mistake restaurant operators make in regards to teen workers?

“Most operators flip over the work permit and think ‘if I follow these, I’m fine’,” says Kate Reiser, WRA Membership Communications Coordinator. The work permits list Wisconsin teen labor laws, but **most employers are subject to federal teen labor laws as well as state law.** Businesses that have a gross revenue of more the \$500,000 or have employees that handle credit card transactions or supplies that come across state lines (considered interstate commerce) are subject to both federal and state laws, Reiser said. (For more information on defining “interstate commerce” see the members-only section of the WRA website or call the WRA Hotline.) Federal teen labor laws are more restrictive than state laws for kids under age 16 and violations can lead to big fines, Reiser said, so knowing which apply to your restaurant “is one of the most basic things to know about

to avoid getting in trouble.”

What are the biggest mistakes employers make in regards to overtime pay?

The most common mistake, according to Barry Chaet, attorney with Beck, Chaet, Bamberger & Polsky, S.C., and a WRA consulting expert, is **putting an employee on salary to avoid overtime pay.** “They believe because they are salaried they are exempt from overtime pay, and that’s not true,” he said. Employees must be in administrative, executive or managerial positions to be exempt from overtime. For restaurants, if you have an executive chef who spends most of his time managing employees, overseeing the kitchen, ordering supplies—i.e. running the restaurant—he can probably be considered exempt. But a chef who spends most of his time cooking and filling orders is probably still entitled to overtime pay, even if you put him on a salary, Chaet said. Other common mistakes? According to Chaet: not paying overtime for hours over 40 in a week (you have to look at hours per week, not per pay period); not paying overtime to someone because they are

working in two different restaurants under your ownership (the hours usually—with a few exceptions—need to be calculated together for OT purposes); and allowing employees to “waive” their overtime (you can’t forgo paying overtime even if the employee agrees). For more on overtime regulations, you can again consult the members-only section of the WRA website or call the WRA Hotline Team.

What is the most important thing to know about tip pooling?

Under federal law, **only front-of-the-house employees (waitstaff, bussers, hosts, bartenders) can be included in a tip pool**, according to Reiser. If your waitstaff is required to tip out back-of-the-house employees—like cooks and dishwashers—your tip pool could be deemed illegal. “You risk your right to take your tip credit if you have an improper tip pool, and that would be a big hit,” Reiser said.

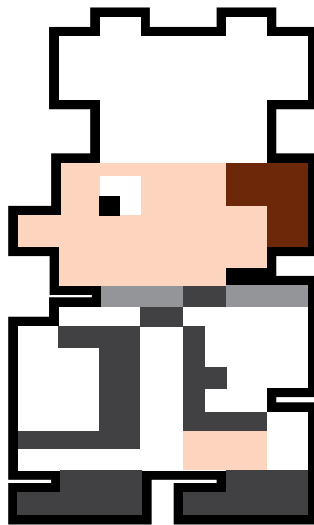
What is my obligation regarding my employees’ reporting of tips?

Your tipped employees are required to report 100 percent of the tips they receive. **“Your responsibility is to educate and inform your employees of the requirement,”** Reiser said, “and if something is obviously out of whack, take disciplinary action.” How do you know if your employee is underreporting? “If someone is (consistently) reporting \$50 a night, and someone else is (consistently) reporting \$20 a night, it’s an easy way to calculate what’s expected,” Chaet said. “Someone is underreporting or is a poor server and the employer should do something about it,” he said.

Have any new issues come up recently in regard to labor laws?

Yes, Chaet says there are two that restaurant owners should specifically be aware of:

“Both the federal and state government are cracking down on the misclassification of employees as independent contractors,” he said. Of specific concern, **musicians that play at your restaurant might need to go on your payroll as employees rather than**



being paid as independent contractors.

In broad terms, if the musician(s) play multiple venues, they are more likely to qualify as independent contractors; if they play only at your restaurant, they may need to be treated as employees. Under a Wisconsin law that went into effect in July, there is a new list of criteria that must be met to qualify as an independent contractor in Wisconsin. If you hire people as independent contractors, Chaet says you should check into this law further and make sure you are on the right side of the law. Call the WRA hotline for more information.

On a second front, restaurants, along with other employers, are **required to provide break times to nursing mothers to express breast milk** under a law that went into effect in March, 2010. “Very few restaurants know this,” Chaet said. If you get this request from an employee, you will need to check into the details of the requirement to make sure you are complying.

Hiring and employee management

What is the biggest mistake employers make when hiring?

The biggest mistake employers make from the get-go, **“is not taking the time to check references and verify the information on an employment application,”** said Debbie Taber, WRA Human Resources and Office Administrator. Applicants are known to have lied about job titles (prep cooks who promote themselves to sous chefs) or fudge employment dates so they can omit a previous job that ended badly.

Checking job duties and dates with references before hiring, “can prevent headaches and help assure you that the person you are hiring is a good, honest hard worker—and that’s what you want,” Taber said.

What are the biggest mistakes employers make after hiring?

If Taber had to name two, they would probably be these: **keeping poor records and keeping poor employees.**

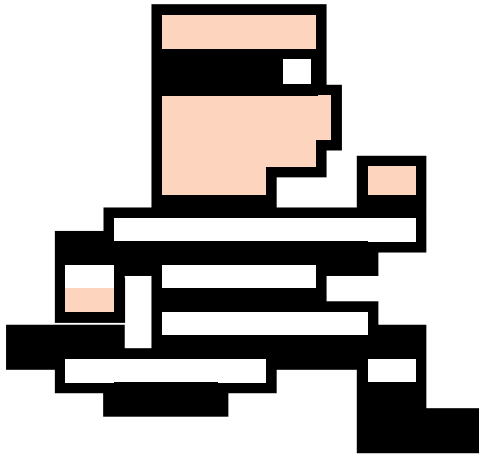
“Employers can terminate someone for any reason or no reason as long as it isn’t an illegal reason (such as race, religion, etc.),” Taber said. Employers, however, become afraid to fire someone because they fear lawsuits and/or unemployment claims. Taber said the employer’s best friend in these cases is accurate documentation of poor performance or policy violations.

“You’ll need to show that on a specific date something specific happened,” Taber said. “Record incidents immediately when they happen; if you don’t, you’ll get tripped up,” she said. However, even if you’ve legally fired someone and have an accurate record of the employee’s problems, you will often still be on the hook for unemployment compensation. Still, Taber said, don’t be afraid of your unemployment insurance rate increasing. The damage a bad employee can inflict on your business can be much worse than the cost to your unemployment account or going through the hiring process all over again.

“THEY BELIEVE BECAUSE THEY ARE SALARIED THEY ARE EXEMPT FROM OVERTIME PAY, AND THAT’S NOT TRUE.”

- BARRY CHAET

continued on page 30



Scams targeting restaurants

How can I spot someone trying to scam my restaurant?

WRA regularly notifies its membership of restaurant-aimed scams making the rounds throughout the state. The most common one lately, according to Kim Burns, WRA Director of Members Services, involves relay-operators. “Basically, a restaurant operator gets a call from someone using the relay operator service (legitimately used by the hearing impaired) requesting a large order,” Burns said. The scammers will pay up front with a credit card and ask the restaurant to wire money to a third party delivery service for delivery of the food. Then the order is cancelled (or is found to be on a stolen credit card) and the restaurant is out the money wired to the delivery service. Variations on the scam exist, and Burns said to be cautious of very large orders, orders that are deemed super urgent, people ordering from other countries, purchasers who seem disinterested in any of the details of such a large order, or people charging to multiple credit cards. “You don’t want to turn away business,” Burns said, “but if it seems like it’s too good to be true, it probably is.”

Alcohol regulations

How do restaurant operators properly handle corkage fees or other issues related to guests bringing their own alcohol into the restaurant?

The short answer is: you don’t. It is against Wisconsin law for customers to bring their own alcohol into your

The WRA Hotline in Action

A WRA member called the Hotline Team with a question: “Can I re-serve jelly packets that go out with the toast when the customer does not use them? Right now I am throwing them away.” WRA Hotline Team member Kim Burns looked up the regulation in WRA’s Food Code reference materials and indicated that he could indeed re-serve jelly packets if they are still in good condition. The member was so pleased with getting this question answered that he said “well that was worth the cost of my WRA membership right there!”

licensed establishment. “Every alcohol beverage brought into an establishment must be brought in by a licensed wholesaler,” said Pete Hanson, WRA Director of Government Relations. Customers bringing in their own alcohol, such as a special bottle of wine from their personal collection to go with dinner, is a common occurrence in many other states, Hanson said. In Wisconsin, however, it is illegal.

Can a restaurant operator buy alcohol from a nearby liquor store if they run out during serving time?

Another rumor that keeps circulating is that if you run out of a certain type of liquor during the evening, you can purchase a bottle from a liquor store. Not true, Hanson says.

“You’ll hear people say as long as it’s no more than 2 liters, or 10 liters, or so many times per year,” Hanson said. “Unfortunately, there is no allowance for that under Wisconsin law.” Just as



in the issue above, under Wisconsin law all liquor must be brought in through a licensed wholesaler.

What are the requirements for having a licensed bartender on premise?

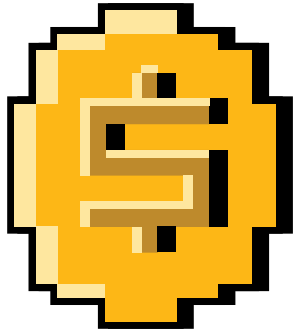
Some operators may think that the licensed bartender on duty just has to be on premise. “The law requires that the licensed bartender has to be in visual sight of everyone else who is serving,” Hanson said. “You can have as many people as you want mixing drinks, but at least one licensed person needs to be supervising. Doing things like helping out in the kitchen or doing paperwork in the office is not visually overseeing the other bartenders.” This is why it pays to have multiple bartenders licensed, rather than just the owner or bar manager.

Credit card processing

How do I evaluate a new credit card processor who says they can save me money?

“You have to do your homework,” says George Krug, WRA’s consulting expert on credit card processing. “You have to focus on the bottom line.” Credit card processing has become very complex with different rates for different types of cards, credit vs. debit cards, etc. Sales people will show you one aspect of your billing where their rates are less, but that doesn’t mean you’ll save money overall, Krug said—you’ll need to look at equipment fees, annual fees, support fees, etc. When the salesperson shows you savings, “make them explain that number and explain ALL of the fees,” Krug said, including termination fees. Another thing to know—“spreads are not as great as people think,” Krug said. “It’s very competitive and there’s not going to be tens of thousands of dollars of savings from one company to another,” he said. He also touts the plan endorsed by WRA. “WRA has negotiated a preferred pricing plan for their members which individual operators, based on their own volume, normally wouldn’t be able to get,” he said.

continued on page 32



What is PCI compliance? Is it something I have to worry about?

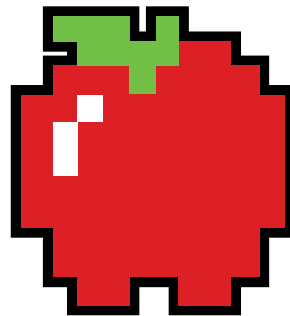
Yes, says Sandy Giese, Director of Finance at WRA. PCI compliance refers to the Payment Card Industry Data Security Standards (PCI DSS). “If you are accepting credit cards, you have to follow these standards,” Giese said. Compliance standards are complicated and ever-changing. They include such things as truncating customers’ credit card numbers on receipts and maintaining compliant equipment

and software, which may include your POS system. If your credit card system is breached, you will be required to have an audit, Giese said. “That’s usually a minimum of \$8,000, plus you can have big, big fines.” The best way to stay compliant? “Operators need to work with their card processor and make sure they are in compliance with ever-changing payment card industry standards.” Giese said.

Food safety

What do I do if someone claims they became ill eating in my restaurant?

Get all the information you can from the ill customer, says Susan Quam, Executive Director of the WRA Education Foundation. (WRA has a Foodborne Illness Complaint form to make sure you ask all the right questions.) Next, call the health department in to investigate. “That’s the first thing most operators don’t want to do,” Quam said, but the Health Department can provide you “validation or vindication”—either finding what went wrong or proving that the customer’s illness didn’t originate in your restaurant. Finally, be cooperative with the media and let the public know you are cooperating with public health authorities and that you take food safety seriously.



What is the most common source of foodborne illnesses in restaurants?

“The most common mistake is letting sick employees work,” Quam said. “It’s the restaurant’s responsibility to inform employees that if they are ill, they cannot work. It’s also their responsibility to be on the lookout in their establishment for sick employees.” While it’s not pleasant to question employees about frequent trips to the bathroom or bodily functions, it is much better than dealing with a foodborne illness in your restaurant.

What’s the best way to deal with food safety inspections?

First and foremost, train your employees on correct procedures and conduct regular self-inspections, says Quam. When the inspector comes, be present, cooperative and professional; be prepared to show records and take notes throughout the inspection. If the inspector feels you are out of compliance, Quam said make him or her show you the section of the Food Code in question and explain the requirement. Discuss areas of non-compliance and be clear on agreed-upon timeframes for corrective action. Finally, act on all non-compliance immediately so you are ready for your re-inspection.

Media relations

How can a restaurant minimize the effect of negative publicity?

“Have a plan in place before anything happens,” says Tracy Kosbau, WRA Director of Marketing and Public Relations. One or two people should be designated as spokespersons for the restaurant and all questions should go to them. “Most times,” Kosbau said, “it’s better to present your point of view

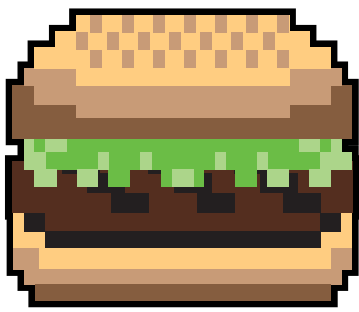
Members Only: A Valuable Online Resource for Members



The Members Only section of the WRA website has an incredible amount of resources for restaurants including explanations of current regulations that are easy to understand and translated specifically for the foodservice industry in Wisconsin.

Here’s a summary of some of the valuable resources available to WRA members quickly and easily online in the Members Only section of wirestaurant.org

- Guide to the latest laws and regulations for restaurant operations
- Posters, forms and front-of-the-house materials for employees and customers
- Personnel materials for restaurant employers
- Past WRA News newsletters and Wisconsin Restaurateur magazine articles
- Info on industry permits and required licensing for Wisconsin foodservice establishments
- Answers to frequently asked questions on restaurant operations
- A complete download of WRA’s HERO Manual, a publication that includes valuable information like overtime calculations for tipped employees and labor laws
- Reference materials on foodservice topics from A-Z
 - o Beverages, alcohol service and bar sales
 - o Catering and buffets, on- and off-premise
 - o Celebrations, theme days and special occasions
 - o Food allergies, allergens and gluten free
 - o Food safety, food code and allergies/allergens
 - o Gift certificates
 - o Going green and environmental issues
 - o Healthy lifestyles
 - o Industry forecast of foodservice trends
 - o Media, publicity and press releases
 - o Music licensing and laws about playing music
 - o Pay scales for employee wages
 - o Scams and fraud targeting restaurants
 - o Smoking ban and smoke-free laws
 - o Web, technology, social media and email marketing



than take the ‘no comment’ route—that is unless there is a potential lawsuit involved in which case you should consult with legal counsel regarding media interviews.” If contacted by the media, try to respond as soon as possible. Keep answers brief. Above all, don’t be defensive, Kosbau said. A good tip: if contacted for a phone interview, Kosbau said ask to call the reporter back in 10 to 20 minutes. “Think about the questions that might be asked and how to best answer them,” she said. “The short pause to collect yourself will really help.”

Visit *Members Only* at wirerestaurant.org for a useful collection

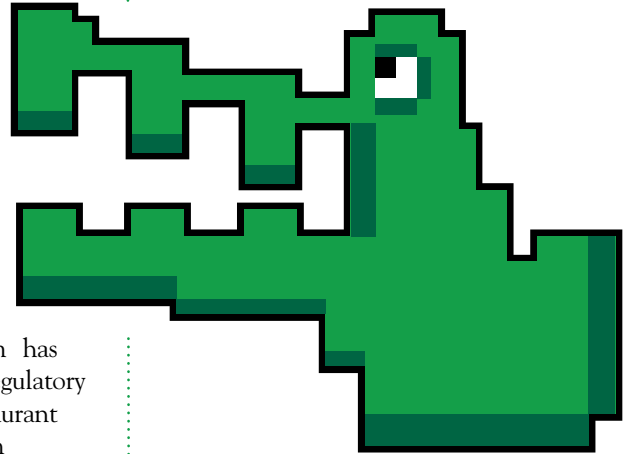
of public relations tips and tools like media interview guidelines, publicity do’s and don’ts, sample news release and more.

Want to know more? Need to know more?

Many of the tidbits provided in this article are just tips of the icebergs so to speak. To know more, or to find out how specific regulations apply to your business, call WRA’s hotline at 800-589-3211. WRA members can also consult the members-only section of the WRA website, www.wirerestaurant.org.

“Most restaurants aren’t large enough to pay to have a professional HR person on staff, but they do have the hotline at WRA,” says attorney Barry Chaet, who consults with WRA on employment law issues. WRA’s Hotline Team has years of experience answering regulatory questions from Wisconsin’s restaurant owners. In addition to their own

expertise, the WRA staff has numerous expert contacts in the legal field and among government officials, enabling them to get you answers to your questions quickly and confidentially. In many cases the information might be out there somewhere, but you have to find it, sort through it and figure out what it means for your business. WRA does this for you, which is a huge time saver. **WR**



ENJOY SOME TASTY PERKS

GREEN BAY • MILWAUKEE • LA CROSSE • WAUSAU



Special development incentives are available in select markets for experienced food service operators.

Dunkin’ Donuts continues to expand with single and multi-unit opportunities and no minimum unit requirements.

VISIT US AT THE
WI RESTAURANT EXPO
BOOTH 325

www.DunkinFranchising.com

or email our Franchising Manager: James.Weidling@DunkinBrands.com



Minimum financial requirements for Single Unit Development Opportunities are \$250K liquid assets and \$500K net worth. Single unit opportunities vary by market. ©2011, DD IP Holder LLC. All rights reserved. Dunkin’ Brands, Inc., 130 Royall St. Canton, MA 02021