



STATE VS. FEDERAL LAW

Guide to laws and regulations for restaurant owners

All Wisconsin restaurants must comply with Wisconsin state labor laws. Restaurants meeting certain criteria are covered by the Federal Labor Standards Act (FLSA) and must obey federal laws in addition to state laws. If the two laws differ, you must follow the **stricter** of the two laws -- in other words, the law most beneficial to the employee. The WRA HERO manual will outline both state and federal law where applicable.

You must obey state and federal laws if:

- Your business has an annual gross revenue of \$500,000 or more.

-OR-

- You do not meet the revenue criteria but you have employees who are engaged in “interstate commerce.” Example: servers who handle credit cards are engaged in interstate commerce because credit card transactions cross state lines. In this case, you would apply federal and state law to those employees handling the credit cards and only the state law to the rest of your employees.

Note: You must count the revenue of your entire business “enterprise” in the calculation. If you own other retail businesses, even if they are separate corporations, the sales must be added together.

If you do not meet the above criteria, you only need to follow state law.

Questions? Contact the WRA Hotline: 800-589-3211 or hotline@wirerestaurant.org

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Frequently Asked Questions

Q: I do not meet the revenue requirements for federal labor standards but I do accept credit cards. Which rules do I follow and when?

A: There are two ways a business qualifies for regulation under the federal Fair Labor Standards Act: meeting the revenue requirement or having employees engaged in interstate commerce. However, the “interstate commerce” test is employee by employee. You must comply with federal standards for those employees that are engaged in interstate commerce; you don’t have to follow federal law for the employees who are not.

Receiving a tip on a credit card, accepting out-of-state checks, or unloading a truck that traveled across state lines, would all be examples of “interstate commerce” in the government’s eyes.

Technically, your servers could be covered by federal law one pay period and not another. However, it only takes one charged tip in a pay period to put a young server in the federally covered category. WRA recommends you consider anyone who receives tips as covered by federal rules if you accept credit cards.

Q: I’m not certain about whether or not my business is subject to FLSA. Where can I get more help?

A: The Department of Labor (DOL) has lots of information on their website that should be able to clarify things for you. For example they have a variety of facts sheets, guidelines and even e-tools. Visit www.dol.gov/whd/flsa/

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