

NC RESTAURANT WORKERS

Your Rights at Work

Created by the NCJC Workers' Rights Project and Grassroots Law & Organizing for Workers (GLOW)

Please Note: Additional rights may apply. The rights listed below apply to you regardless of your immigration status.

WHAT ARE MY RIGHTS AT WORK?

Restaurant workers in North Carolina have rights at work, such as:

- The right to be paid the minimum wage, and overtime for hours worked over 40 in a week;
- The right to be free from race, sex, age-based, and other forms of discrimination and sexual harassment;
- The right to take unpaid, job-protected leave to care for yourself, a child, or family member with a serious medical condition if you meet certain qualifications;
- The right to a workplace free of dangerous conditions; and
- The right to organize a union with your coworkers and to be free from retaliation for that organizing.

HOW MUCH DOES MY EMPLOYER NEED TO PAY ME?

In North Carolina, employers must pay most workers the **minimum wage of \$7.25 per hour**.

"Tipped workers" (like waiters) must be paid a direct cash wage of at least \$2.13 per hour, as long as the tipped worker's hourly wage plus tips equals at least the minimum wage for each hour they worked over a work week

- **If your hourly wage and tips added together do not meet \$7.25 per hour, your employer has to pay the difference so that you make at least \$7.25 for the workweek.**
- You are a "tipped worker" if you typically receive more than \$20 per month in tips.

WHEN DO I GET OVERTIME PAY?

Most restaurant workers are entitled to overtime pay at the rate of one-and-a-half times their regular hourly rate for every hour they work over 40 hours in a week.

- For example, if you make \$7.25 an hour, you should be paid \$10.87 for every hour you work over 40 in a week.

IS MY EMPLOYER REQUIRED TO GIVE MEAL OR REST BREAKS?

In North Carolina, **there are no mandatory meal or rest breaks for workers who are aged 16 years and older**. If your employer decides to give you breaks, the breaks must last at least 30 minutes for the employer to deduct the time from your pay. Breaks of less than 30 minutes must be paid by the employer.

WHAT IS A "TIP"?

- **Tip:** A customer's voluntary payment where the amount is set by the customer and the employer does not have a minimum set tip amount. If an employer charges every customer a service charge of 15%, this is not voluntary, is set by the employer, and so is not a tip.
- Tips are usually the property of the worker who receives them, and employers/managers/supervisors cannot keep any portion of their workers' tips.
- Employers must retain complete and accurate records of the amount of tips received for each workweek.
- Tips must be certified by the worker monthly or for each pay period.

HOW DO TIP POOLS WORK?

- Employers may require tipped workers to combine their tips and then redistribute them in a tip pool, according to a pre-arranged formula.
- Workers must be notified before the pay period that a tip pool is used.
- **Rules for tips and tip pooling change, depending on whether your employer is covered by North Carolina law, or federal law.**
 - Businesses with less than \$500,000 in gross annual sales are covered by North Carolina law.
 - Workers at these businesses must keep at least 85% of their tips, before paying in to any tip pooling arrangement.
 - Tipped workers cannot be required to share their tips with non-tipped workers, like back-of-house staff, at these businesses.



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- Businesses with \$500,000 or more in gross annual sales are covered by federal law:
 - There is no requirement for how much of their tips workers at these businesses must keep in a tip pooling arrangement.
 - Non-tipped workers at these businesses can be part of a tip pool, but only if all employees are receiving the full federal minimum wage.
- You can find out which law applies to your employer by asking HR, or estimating based on recent sales. \$500,000 in gross annual sales is about \$10,000 in sales per week, or \$1,400 per day.

HOW DO TIP CREDITS WORK?

If employers choose to pay tipped workers less than \$7.25, this is called “taking a tip credit.” Employers must notify you before taking a tip credit.

Dual Jobs Rule:

- Employers can only take tip credits for hours workers are actively performing duties that are part of their tipped occupation.
- Any hours you spend on tasks that are not part of a tipped occupation (like cleaning or maintenance) must be paid at \$7.25, the full federal minimum wage.

CAN MY EMPLOYER REDUCE MY WAGES OR TAKE MONEY FROM MY PAY?

- Employers can change their wage agreements with you at any time, unless you have an employment contract that says they cannot (most workers don't have such contracts). To make changes, employers must:
 - Notify you in writing at least one pay period before a change; and
 - Employers may not make changes that result in reductions of wages or wage benefits that you've already earned.
- Deductions are only allowed for reasons such as income tax, Medicare and Social Security taxes, and court ordered garnishments, or with prior written consent and signed authorization by the worker.
- Employers are required to give 7 days' notice of deductions unless employment is discontinued.
- Some things that workers should not have to pay for include: personal protective equipment (safety gear) and most uniforms.

WHAT IS WAGE THEFT?

- Wage theft by employers happens in many ways.
 - Paying below the minimum wage;
 - Paying less than the agreed amount;
 - Not paying overtime, or paying overtime at incorrect rate;
 - Withholding your final paycheck after you leave a job;
 - Illegal deductions;
 - Asking for unpaid (off-the-clock) work; or
 - Asking you to buy things for work (tools, uniforms, ingredients) without reimbursing you.
- If you are experiencing wage theft, you have the right to organize with coworkers to address the issue, or file a complaint with the Wage and Hour Bureau of the North Carolina Department of Labor (NCDOL) 1-800-625-2267, www.nclabor.com/wh/wh.htm, or with the U.S. Department of Labor 1-866-487-9243, <http://www.dol.gov/whd/>.

CAN I TAKE UNPAID TIME OFF?

The Family Medical Leave Act (FMLA) requires many employers to provide eligible workers up to 12 weeks of unpaid leave per year, with a guarantee of being able to return to your job (or one with similar pay and benefits) afterwards.

Workers can get FMLA leave for:

- The birth, adoption, or foster placement of a child, and to care for the child within one year of birth/adoption/placement;
- Caring for a spouse, parent, or child with a serious health condition;
- A worker's own serious health condition makes the worker unable to perform essential job functions; and
- Qualifying situations that happen because the worker's spouse, child, or parent is a covered military member on “covered active duty.”

You are eligible for FMLA leave if you:

- Have worked for at least one year; and
- You have worked at least 1,250 hours within the last year at a business with 50 or more workers.
- You must give at least 30 days' notice before taking FMLA leave, except if you have a medical emergency.

WHAT IF MY EMPLOYER VIOLATES MY RIGHT TO TAKE LEAVE UNDER FMLA?

If you have a complaint about your right to leave under the FMLA, those complaints go to the U.S. Department of Labor. To learn more, contact the US Department of Labor online (<http://www.dol.gov/>) or call 1-866-487-9243.

WHAT ARE ILLEGAL DISCRIMINATION AND HARASSMENT?

Title VII of the Civil Rights Act gives you the right to be free from discrimination based on race, color, national origin, sex, pregnancy, religion, disability, citizenship status, or age (40 years or older). Discrimination can include:

- Firing;
- Demotion;
- Denying a promotion;
- Reduced pay or hours; and
- Refusal to hire.

Title VII also prohibits sexual harassment in the workplace. Sexual harassment is unwelcome verbal or physical conduct including sexual advances and demands from supervisors. Unwelcome or offensive comments can also be harassment, depending on whether they create a hostile work environment.

WHAT CAN I DO IF I AM EXPERIENCING DISCRIMINATION?

You cannot go straight to court with a claim of employment discrimination. You must first complain to the Equal Employment Opportunity Commission (EEOC): 1-800-669-4000 or online at www.eeoc.gov. A friend, family member, or anyone else you trust is allowed to help you through the EEOC process. You do not need a lawyer to go to the EEOC, but you can hire one if you want.

You must file a Charge of Discrimination at the EEOC within 180 days of the discrimination you experienced. If you wait more than 180 days, you lose the right to file at the EEOC and you lose the right to sue your employer in court for violating discrimination laws.