U.S. Department of Labor

Wage and Hour Division
Washington, DC 20210

FLSA 2025-05

September 30, 2025

Dear **Name***:

This letter is in response to your request for an opinion concerning the application of the overtime requirements of the Fair Labor Standards Act (FLSA) to your work at a restaurant and a members-only club ("members club"), which operate on the first and second floors, respectively, of a hotel, and whose ownership, management, and operations, among other things, appear common.

It is our opinion that, under the specific facts presented, you are jointly employed by the restaurant and members club. Accordingly, under these facts, all the hours that you work at the restaurant and members club must be combined for purposes of calculating your hours worked each workweek, and both the restaurant and members club are jointly and severally liable for all aspects of FLSA compliance.

This opinion is based exclusively on the facts as presented below that you provided to the Department and may not apply to different facts in this or other situations.

BACKGROUND

You represent that you are employed as a hostess at a restaurant at the rate of $28.00 per hour and have been offered shifts at the members club at the same rate of pay. The restaurant is located inside of a hotel with the members club located on the second floor of the restaurant. The restaurant and members club share a kitchen, offer substantially the same food and beverages, and operate under similar trade names. You further state that other employees also perform work in both the restaurant and members club in the same workweek, such as other hostesses, the bar manager, the wine director, and members of the management teams of each facility. Similarly, you represent that you are occasionally "clocked in" at the restaurant while assigned to work at the members club at the same hourly rate and that you have observed managers from the restaurant participate in disciplinary matters at the members club when you were working there. Although the restaurant and club are purported to have separate business structures and possibly use different timekeeping and payroll systems, you believe they have common ownership.

Your request indicates that you generally work 5 dinner shifts per workweek at the restaurant, which total 40 hours or less per workweek. You have been asked to "pick up" 4 lunch shifts at the members club, which will increase your total hours worked in the workweek beyond 40 hours. When you asked whether you would receive overtime pay for hours worked over 40 in a workweek, you state that you were told that you would not, on the basis that the restaurant and members club are different companies.

GENERAL LEGAL PRINCIPLES

The FLSA defines "employer," "employee," and "employ" at 29 U.S.C. § 203 (d), (e) and (g), respectively. An "employee" is "any individual employed by an employer," an "employer"

includes "any person acting directly or indirectly in the interest of an employer in relation to an employee[,]" and the term "employ" includes "to suffer or permit to work." 29 U.S.C. §§ 203(e)(1), 203(d), 203(g). The FLSA separately defines the term "person" to include "any organized group of persons," which could include groups of "corporations." 29 U.S.C. 203(a).

Separately incorporated entities may be considered a single employer with respect to an employee, or employees, for purposes of compliance with the FLSA. Alternatively, even if two or more entities are considered separate employers, they can nonetheless be "joint employers" under the FLSA if they have related employment relationships with the same employee(s). *See, e.g.*, *Chao v. A-One Medical Services, Inc.*, 346 F.3d 908, 917–18 (9th Cir. 2003). All joint employers are jointly and severally liable for FLSA compliance, including any wages, damages, and penalties owed to the employee(s). *See, e.g.*, *Schultz v. Capital Int'l Sec., Inc.*, 466 F.3d 298, 310 (4th Cir. 2006).

When one employer employs a worker for one set of hours in a workweek, and another employer employs the same worker for a separate set of hours in the same workweek, that scenario may be, under appropriate circumstances, "horizontal" joint employment. Horizontal joint employment typically occurs when employers are sufficiently associated with respect to the employment of the particular employee(s). *See generally Chao*, 435 F.3d at 918 (citing 29 CFR 791.2(a) (2003)). As relevant here, this can occur where, among other situations, "there is an arrangement between the employers to share an employee's services, as, for example, to interchange employees." *Id.* at 917 (quoting 29 CFR 791.2(b) (2003)).

If horizontal joint employment exists, the employee's total hours worked each workweek for all joint employers must be used (1) to confirm that the employee has received the FLSA minimum wage and (2) to determine the employee's entitlement to overtime pay—both with respect to whether or to what extent overtime hours have been worked and the total remuneration and total hours worked for purposes of calculating the regular rate and resulting overtime premium due. *See, e.g.*, *Chao,* 346 F.3d at 918 (aggregating hours from joint employers for the purpose of determining overtime); *Wirtz v. Hebert*, 368 F.2d 139, 141–42 (5th Cir. 1966) (same). Thus, an employee's hours worked for all the employee's joint employers must be added together to determine the employee's total hours for the workweek, and each of the employers is jointly and severally liable for any wages owed under the FLSA. For example, two separate retail establishments might coordinate with each other over the pay or work schedule of the same cashier such that they are joint employers. In this scenario, if the cashier worked 30 hours per workweek for each establishment, the cashier would be entitled to 20 hours of overtime premium pay (60 total hours minus 40), which the cashier could collect from either employer.

OPINION

Based on your representation of the facts, we agree that your hours worked for both the restaurant and the members club, because they are joint employers, must be combined to determine your hours worked during each workweek, and that you are entitled to overtime pay if your combined hours exceed 40 in a single workweek.

As explained above, while the restaurant and members club may be separate legal entities, corporate formalities do not necessarily override the FLSA's application. The facts you have

provided are sufficient to demonstrate a horizontal joint-employer relationship under the FLSA, as the restaurant and members club are sufficiently associated with each other with respect to your employment.

For example, the two facilities appear to be operationally integrated with each other, including their physical proximity, their common kitchen, and their similar food and beverage menus. While the restaurant and members club may have separate management teams, some managers periodically supervise and manage both, and the facilities apparently have the same owners. *See* WHD Opinion Letter FLSA2005-17NA (June 14, 2005) (noting that potentially relevant factors to prove the sufficient association of joint employers include "whether there are common officers or directors of the companies" and "the nature of the common management support provided"). That you can be "clocked in" at the restaurant and then directed to work in the members club likewise indicates sufficient association, as do your identical rates of pay at each facility and the fact that the additional shifts being offered at the members club do not conflict with your current restaurant schedule, which suggests that they coordinate when scheduling you. All these factors are indicia that the two operations are at minimum joint employers under the FLSA.

Accordingly, the Department believes that all of the hours that you work each workweek at the restaurant and the members club must be combined for the purposes of FLSA compliance, and that you should be paid the overtime premium in accordance with the FLSA for hours worked over 40 in a workweek.

We trust that this letter is responsive to your inquiry.

Sincerely,

James R. Macy
Acting Administrator

***Note: The actual name(s) was removed to protect privacy in accordance with 5 U.S.C. § 552(b)(6).** You represent that you do not seek this opinion for any party that the Wage and Hour Division (WHD) is currently investigating or for any litigation that commenced prior to your request. This opinion is based exclusively on the facts and circumstances described in your request and is given based on your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. The existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein. This is an official ruling for purposes of the Portal-to-Portal Act, 29 U.S.C. § 259.