

## **Overtime Rules – Some Common Myths**

*July/August 2007*

*By Mark D. Halverson and Charles Y. Hoff*

*Taylor, Busch, Slipakoff & Duma, LLP – Hospitality Group*

Unless an exemption applies, federal law in the form of the Fair Labor Standards Act (FLSA) requires employers to pay workers 1.5 times an employee's regular rate of pay for all hours worked over 40 in a work week (There is also no statute or any regulations in Georgia covering the paying of overtime). Although this sounds straight-forward, a great many "myths" have grown up around the overtime rules. Let's look at a few of these.

First, the FLSA does not limit the number of hours in the day or hours in a week an employee may be required to work (unless the employee is under the age of 16). The FLSA also does not require that an employee be paid overtime for working more than eight hours in a day, or for working on weekends and holidays (unless the 40-hours per work week limit has been exceeded). Neither Georgia nor federal law require paid holidays off, paid vacations, or any other fringe benefits such as severance, sick pay, accident pay, health insurance, life insurance, and pension benefits. Other such "myths" you may encounter are that the restaurant is required to pay a premium for employees to work weekends or holidays or is required to give regular pay raises.

The FLSA and Georgia law are also absolutely silent on whether employees may be required to work continuously during a shift without rest breaks, coffee breaks, smoking breaks, etc. Also, contrary to popular belief among employees, a restaurant is legally free to schedule shifts with no meal breaks at all. What the FLSA does regulate, however, is whether the meal breaks you do decide to provide are compensable time. The test for being a non-compensable meal break is: (1) the employee must be truly relieved from work duties (except in emergencies); and (2) the meal period must last 30 minutes or more. A meal break can still be treated as non-compensable time even though the restaurant requires staff take their meal breaks on-site, so long as the other tests are met.