



Season 3, Episode 16: “Forkful of Compliance: Digesting New York’s Meal Credit”

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[Lee Jacobs]: Hello, and welcome. My name is Lee Jacobs, and it’s my pleasure to welcome you to Barclay Damon’s latest episode of the *Labor & Employment Podcast*, “Forkful of Compliance: Digesting New York’s Meal Credit.” Now, today we’ll be diving into the specifics of the meal credit in New York, a critical topic for many employers and employees in the hospitality and other industries throughout the state. Now, the meal credit allows it for employers to deduct a certain amount from their employee’s wages to cover the cost of providing meals to their employees. Understanding these regulations can help you manage your workforce more effectively and ensure compliance with state laws. Now, this episode is actually one of a multi-part series inspired by a question from my colleague Rosemary Enright, who unfortunately wasn’t able to join me for today’s episode. But I promise listeners, she’ll be back soon.

[Lee]: But you maybe recall, during our overtime series, she asked me a question of “how do you calculate overtime when an employee has a tip credit being taken against them?” And that inspired me to start this series, of which this is a third of the credits and other deductions that we give or take to our employees under different circumstances. We’ve previously discussed the tip credit, a uniform allowance, and in this episode we’re going to discuss the meal credit. So now the meal credit allows you to legally charge your employees for their meals. But in order to do so, you must follow specific rules. Unsurprisingly, right? And we’re going to outline each of these rules in this episode.

[Lee]: So let’s take a step back and start from the very beginning here. What is a meal credit? Under New York law meals furnished by an employer to an employee may be considered part of an employee’s wages. In other words, most employers may lawfully take a meal credit against an employee’s wages for each shift that they furnish a meal to the employee. However, there are exceptions: employees of certain nonprofits, those covered by the building service and industry wage order, and those covered by the minimum wage order for farm workers have different rules. But in general, these are what you need to know for providing meals and then charging your employees for those meals across different industries. So let’s start with some examples of how meals are provided across those different occupations and industries here in New York State. In the hospitality industry, restaurants often provide meals to staff during shifts known as a “family meal.” And this ensures that kitchen and waitstaff have access to nutritious food and they actually get a chance to eat when they are serving lunch, dinner, or even breakfast to the general public. In the health care industry, hospitals and health care facilities might provide meals for their employees, particularly those that work long or overnight shifts.

[Lee]: If you work an overnight shift or you have a long shift, you may not have the ability to go out and get food for your breakfast, lunch or dinner. And the retail settings. Some large retail stores offer vouchers or access to a cafeteria for their employees. In the construction industry, construction companies, sometimes when they’re working on remote sites, might provide packed lunches or access to food trucks to their employees because there’s no other options. So in these scenarios, where an employer is providing food to their employees, the employer can charge. That’s right, can charge their employees for these meals. One of the questions that I’m going to ask at the end of this to all of you to provide your feedback, and again, we love hearing from you. So please like, subscribe, do whatever you need to do to follow all of our podcasts and other

information that we make available for you to help you stay compliant with the latest and evolving trends in the employment practices here in New York State.

[Lee]: One of the questions that I'm going to pose at the end here is, do you offer meals to your employees? And then a second question is: do you actually charge for those meals? You can offer meals and food to your employees for free. There is no requirement for you to charge your employees, but if you do charge your employees, if you do avail yourselves of the meal credit, there's certain requirements that we're going to jump into right now. So the New York State Department of Labor has established rules to ensure that deductions for meals do not unfairly reduce employees' earnings below minimum wage or below their regular rate of pay. Here are some key points to be aware of. First, notice and record-keeping. Employers must provide written notice to employees about the meal credit and keep detailed records of the costs and provision of meals. The amount that can be deducted from meals is capped and must not bring the employee's wages below minimum wage, or below their regular rate of pay. So there are different amounts that the credits can fall into; there are different credits, depending upon what industry an employee works in. But before we get into those credits and those amounts, let's define the different categories of employees under the various wage orders in New York. So food service employees. Food service employees are employees who work in the preparation, service, and delivery of food and beverages. Examples include waitstaff, bartenders, and kitchen staff in restaurants and cafés, for example. Service employees are employees who perform non-food related services, such as housekeeping staff in hotels or customer service representatives in retail stores. Non-service employees are any nonexempt employees, meaning that they are eligible for overtime that are other than food service or service, food service or service employees such as line cooks, maintenance workers, and clerical staff. So now that we have these three categories set into place as to where your employees fall into, what can I actually deduct? What is the maximum that I'm able to take against an employee's wages for their shift? So as of January 1, 2024—now mind you, these rates will be going up. And they're scheduled to go up every single year through January 1, 2026. But here are the rates as of January 1, 2024. The meal credit allowance for different types of employees are as follows: For food service employees in New York City, Long Island, and Westchester, it's \$3.85 per meal. And for the rest of New York State, it's \$3.80 per meal for service employees in New York City, Long Island, and Westchester, it's \$4.45 per meal. And for the rest of New York State, it's \$4.10 per meal. And for non-service employees in New York City, Long Island, and Westchester, it's \$5.50 per meal. And for the remainder of the state, it's \$5.20 per meal.

[Lee]: And as I said before, these rates will increase each year through 2026. Now, of course, you may be saying to yourself, Lee, it can't be that easy... because it's not. As most things with New York State, there are actual, specific, minute requirements that we have to follow. And so there are nutritional standards that must apply in order for us to charge our employees for their meals.

[Lee]: Meals provided must meet certain standards. And according to the hospitality wage order, for instance, a meal must include a serving of fruit or vegetable. And this can be anything from a fresh fruit salad to steamed vegetables. There must be grains or potatoes; a starch. Examples include bread, pasta, rice or potatoes. There must be some type of protein given to your employees and this can be eggs, meat, fish, poultry, dairy or legumes. And it could be things such as grilled chicken, a serving of beans or a portion of cheese. And there also must be tea, coffee, milk or juice. Beverages must also be provided to complement the meal. So under this provision, a full compliant meal might be a grilled chicken sandwich with a side salad and an apple and a glass of milk. These standards ensure that meals are not only nutritious and wholesome but comply with the state rules. Now, the different wage orders have a little bit of variation. What I came from the hospitality wage order and that usually excuse me, that is generally the same across all industries. But for example, the miscellaneous wage order allows for the omission of meat... of a protein for breakfast, if two grain items are provided. But the hospitality wage order does not allow for substitutions for breakfast. I know, craziness, but that's what the rules are. But what do we do for when employees have dietary restrictions? For example, rather than making a pasta dish with the chicken included? Separate the two to accommodate gluten-free or vegetarian diets. If you're serving a family-style meal, ensure that there are options for everyone, such as salad, without a dressing for those with *known* dietary restrictions.

[Lee]: And that's key here of what I said. The word "known." Knowing your staff is critical. So if an employee has allergies or dietary restrictions due to religion, and you deduct a meal credit without providing a suitable meal that they can eat, you're at risk. So, for instance, if you provide a meal with gluten and your employee has celiac disease, you're not meeting their needs. This can lead to legal trouble, as you're deducting up to \$3.85 to \$5.50 per meal from their wages, putting their pay potentially below minimum wage and absolutely paying them less than what they should have made for the day, and exposing you to fines and penalties. So let's take this a step further. If you have an employee who's making above minimum wage, let's say \$20 an hour, and they worked a five-hour shift, and during the shift, they had a meal and you charged them for that meal, but they didn't consume that meal because they have a religious restriction that prevents them from eating the food that you prepared during that meal. Now, they should have made \$100 before taxes at the end of that shift. But here they've actually made, if it was the \$5.50 deduction, they've made only \$94.50 for that shift. While they may not be dropping below minimum wage, you've absolutely underpaid them for that shift. You've now exposed yourself to legal fines, interest and penalties.

[Lee]: So how do we protect ourselves? If we do want to implement a system where we provide meals to our employees, and then we want to charge our employees for those meals? We need to have the proof. And to take the analogy a little bit further, the proof has to be in the pudding. Sorry, without Rosemary, my jokes kind of fall on deaf ears and hopefully you found them a little bit funny.

[Lee]: But we need to have documentation of our meals. So first, employees must be informed about the meal credit policy. And this should be in your employee handbook. There should be a process for your employees to acknowledge, and understand, and consent that they are going to eat meals and that you're going to be charging them for meals. Employees should have the option to opt out of the meal program if they prefer to do so. This process must be clearly documented and acknowledged in writing. Additionally, the meal credit must be clearly identified on the employee's pay stub showing the amount deducted. Because, as we've discussed under various episodes, New York's Wage Theft Prevention Act requires that a pay stub show an employee how and why they got paid. So going back to that employee who worked it was, \$20 an hour and was working a five-hour shift for \$100 over the course of their shift. There needs to be a line item on their pay stub that shows one meal deduction, \$5.50. So coming back to that question that inspired these series of episodes, we ...let's ask this. How do we calculate overtime when a meal credit is being applied? Just like with the tip credit, the answer is fairly simple. When calculating overtime for employees, it's crucial to do so at the end of the pay period. And after all deductions and credits have been applied, the full rate must be used for the base calculation. And then after that, the base calculation is time by one and a half times. Then you can minus out any meal credits and other deductions.

[Lee]: Doing so ensures proper calculation of overtime, and it helps avoid future legal issues. And I'm going to share my screen and bring up the LS 54 again. As most of you know that have been frequent listeners of the podcast, you know that the LS 54 is a document that's been provided by the New York State Department of Labor, and it is a wage acknowledgment form. It is the first part of the Wage Theft Prevention Act, which requires us to give notification to our employees about their wages. And that's coming up on my screen now, here. And you hopefully you all can see it. And for those of you that aren't viewing this on a platform that allows you to see the screen, I'll explain it as well. This document is broken into three columns. On the left column, there's a checkbox that says when this document should be given, whether at hiring or before a rate and change in pay.

[Lee]: And in the middle column there are four, excuse me, five sections that need to be filled out. The first, under number three, is the employee's rate of pay. This is the employee's regular rate of pay, and under no circumstances should it ever be below minimum wage. Even if you were taking a tip credit or a meal credit, as we're about to discuss. So this number should never be below \$15 or \$16, depending upon where you are in New York City. In item four, there are checkboxes for none, tips, meals, lodging, and other. So if you're going to avail yourself of a tip credit or the meal credit, you have to one, check the box. The checking of the

box is crucial here, because if you check the box and then just write down tips, \$5 an hour, for example, are you availing yourself of the credit or not? The point of this document is to give your employees proper notice of any types of credits or deductions that are being taken.

[Lee]: So here in this employee, you would be checking tips. If they are tipped employee and if they are also receiving meals, as in this scenario as we were for this employee making \$20 an hour, we check the box “meals” and make it \$5.50 per meal, and then we would fill out in box five, the regular pay day, in six check off the pay; is whether it’s weekly or biweekly or something else. And then for box seven, we have overtime pay rate. And this is always one and a half times what we have put in box three. Again, the overtime pay rate is always one and a half times what is in box three, which is no less than minimum wage. And then once we come to that calculation here for this employee that was \$20 an hour. So we’d have \$20 in box three. Their overtime rate would be one and a half times that, so would be \$30 an hour. So their overtime rate is \$30 an hour. And at the end of every shift, we could deduct \$5.50 for every meal taken.

[Lee]: Easy-peasy. Use the form, fill it out correctly, and our math is done for us. So doing so—make sure that we pay our people properly and prevents potential legal issues. And it also ensures fair compensation for your employees. Now what are some common pitfalls to avoid and to be aware of? Some things that you need to be aware of include failing to provide proper, required notice to your employees. If you don’t give them notice before the deductions are being taken either in the handbook, certainly on the LHS 54... And by the way, as we’ve talked about, not having or giving an incorrect or not fully filled out LS 54 or other wage acknowledgment form, depending upon what type of employee you have, leads to a \$50 per day penalty capping at \$5,000. So if you take the meal credit and you don’t check it on the form, not only are you liable for having to reimburse your employee for every meal that you improperly took the meal credit for, even if everything else is complied with properly, you’re on the hook for reimbursing them for that meal credit, and you are potentially on the hook for a \$50 per day penalty when the LS 54 was either not there or incorrect. And on top of that, you have the second half of the Wage Theft Prevention Act, which assesses a \$250 per pay period penalty capping at \$5,000 per employee if their pay stub does not accurately reflect how and why they were paid. So back to that employee who was making \$20 an hour, a five-hour shift, \$5.50 for a meal.

[Lee]: A business chooses to take that credit, to deduct \$5.50, but they never gave the employee notification of the meal. They never gave them the wage notification form, as required by the Wage Theft Prevention Act, and they never gave them. And excuse me, and the way their pay stub doesn’t properly identify the meal credit as being taken. I thought... to save \$5.50 on that meal that we gave to our employee has now turned into at least a \$300 penalty, presuming that LS 54 error only exists for one day, and that penalty lasts for just one pay period. So if we then do take this, these deductions improperly, because either we haven’t done the notice and the record keeping requirements properly, or we haven’t given proper meals that aren’t nutritious as described above, or employees get charged for a meal that they haven’t been taken, we expose ourselves to a potential audit from the Department of Labor and underpayments, because we have brought someone under minimum wage or less than what they should have been making at the end of a shift. Fines and penalties from the Wage Theft Prevention Act, as well as interest... all things that can be completely avoided by following some simple steps for compliance. First, make sure that your communication is clear. Always provide written notice to employees about the meal credit and associated costs therewith. Second, keep accurate records. Maintain detailed records of your meal costs, provisions, and any deductions made from employees’ wages.

[Lee]: Remember, you cannot make a profit off of these meals, nor provide low quality ingredients and charge the full allowed amount. The point of this whole process here of getting a meal credit for your employees, is for your employees to reimburse you for the costs of that meal, so you shouldn’t be providing your employees with low-cost ingredients or non-nutritious food. You should be providing them with nutritious food and not making a profit off of that. And if your employees acknowledge and say that they want to take the meal credit and want to avail themselves of the food that you’re going to give them, or conversely, they want to opt out of the meal program that you have, keep copies of those records and

documentation with you. And you should conduct regular reviews periodically. Review your meal policies and practices to ensure, one, that they're working. Meaning that your employees who actually take the meal and eat the meal are being charged for the meal, and those that don't take the meal aren't being charged for the meal. And what about employees who don't eat on a particular day? Do they have the ability, the option to tell you that they didn't eat your food that day and therefore they shouldn't be charged that meal credit? These are the things that we need to be sure are working in practice. Because in theory, what we're talking about here in the podcast may not necessarily always work.

[Lee]: Failure to comply with meal credit regulations can result in significant penalties and back-pay obligations. Noncompliance may lead to investigation by the Department of Labor, fines, and the need to reimburse employees for improper deductions, as we've discussed. If a meal credit is taken against an employee and they did not eat the meal, the meal didn't meet the standards or they didn't receive proper notice, this can result in wages, as we've talked about, falling below minimum wage or below what they should have been made, exposing you to fines and penalties and severe consequences under the Wage Theft Prevention Act. It's essential to stay informed and to adhere to these regulations to avoid these consequences. And as a reminder, the amounts that we talked about here are going up every single year from now until 2026.

[Lee]: And the question and the thing that I want... that I advise a lot of my clients to think about, and I ask you to think about this: is this worth it? Going back to that employee that is making \$20 an hour over a five-hour shift, and they've taken one meal from you and they... we can take a credit for \$5.50. That means we're taking a deduction of \$1.10 for every hour that they worked. Is recouping that \$1.10 for every hour that they worked worth it? What I mean by that is this: all of the administrative hassle that you are going to have to put into place to make sure people have notifications when they start working, making sure that people opt in and opt out of particular meals, ensuring that your meals are all nutritious and meet the guidelines.

[Lee]: All of your paperwork requirements of tracking the meals of when and how they were paid. Making sure that our pay stubs are correct, that our LS 54s, or what other forms into the wage acknowledged from mid forms are correct. All of the administrative costs that are necessary to do those things. Does that really equate to a savings of \$1.10 an hour? Now, again, I don't mean to peer into anyone's pocketbook, but that is a question that every business should ask as we try to, you know, in theory, recoup this money, which can add up over us over a certain number of employees across your entire enterprise, very quickly into a lot of money. But then you have to ask yourselves, what is the break-even point? Am I spending more money, of my HR staff, of my administrative staff, to track my meal credits than I'm actually saving in charging for the meal credits themselves?

[Lee]: So to wrap up, we've covered the definition of meal credits, the legal requirements in order to charge your employees for those meal credits. The nutritional standards, how to handle dietary restrictions, opting out procedures, the pitfalls and the importance of compliance. Regularly reviewing your meal policies and staying updated with regulations is key to maintaining a compliant and positive workforce. Now, if you found this episode helpful, please subscribe to the *Labor & Employment Podcast* on any of the platforms that you've listened us to, whether it be in Spotify, Apple Music, or even on YouTube or through our website. Please subscribe. Please engage with us, comment, send direct messages. Send us emails. We love to hear from you. Your insights and feedback help us craft what you hear next. We also encourage you to visit our website at www.barclaydamon.com for additional resources. And again, feel free to reach out to us for your assistance. We want you to share your experiences and tips with us, because if you've figured out how to square that circle or circle that square, whatever the term may be, I think you all know what I mean.

[Lee]: Let's not keep those secrets to ourselves, because we are literally all in this together, and let's all make everyone's practices just a little bit better each time. So before you go, we've asked... I've got some questions to ask you that you can engage through Spotify. Currently, do you provide meals to your

employees? A, yes, B, no. I'm actually very curious to hear what you all have to say, because I see an even split, in all reality, with my clients. Some charge for the meals and others don't. And each of those two businesses, each business, whether you fall on one side of the equation or the other after you've done that internal retrospection to see if the costs of administering the meal credit actually cost more than the meal credit savings themselves. After you've answered that question, then yes, absolutely charge for the meal credit, but make sure you do it correct and properly. So with that, I'd like to thank you for joining me on this episode of Barclay Damon's Labor & Employment Podcast. And again, my name is Lee Jacobs, and I look forward to our next discussion as we continue to delve into the nuances and minutiae of being an employer in the state of New York. Until then, stay compliant. Stay safe, stay happy, and keeping in theme with this episode, keep your workforce well-fed and happy. Thank you so much everyone.

[Ari Kwiatkowski]: The *Labor & Employment Podcast* is available on barclaydamon.com, YouTube, LinkedIn, Apple Podcasts, Spotify, and Google Podcasts. Like, follow, share, and continue to listen. Thanks.

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