

Employee Tips: Sharing, Pooling and Best Practices

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- Legal restrictions
- Interaction with tip credit
- Typical violations and liabilities
- Best practices

UNLV Tip Pooling: Operational Issues

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1. Who can be required to pool their tips?
2. Who can take a share of the tips?
3. How is a tip pool implemented and enforced?
4. How does this affect tip credit?

FLSA: “Wages” may include tips if:

- Employees receive advance notice
- State law allows it
 - AK, CA, MN, MT, NV, OR, WA do not
- Subminimum wage paid (\$2.13 or state law)
- Wages plus tips exceed minimum wage
- Employees retain the tips they receive
 - **EXCEPT** for a valid tip pool

Tip Pool Participants

- Only employees who regularly and customarily receive at least \$30 per month in tips may be required to participate
 - Presumed eligible: Food and beverage servers, food runners; valet drivers, bellhops, bussers, bartenders, hosts, maitre d'
 - Not eligible: cooks and chefs, dishwashers, janitors, food preparers

UNLV Tip Pool Contribution Amount

- Each employee's contribution is a customary and reasonable amount
 - 85% Rule
- Tips retained + wages \geq applicable minimum wage
 - In each work week

Distributions are limited to employees who:

1. Customarily and regularly receive tips
 - Direct or shared
 - and
2. Are required to contribute their own tips to the pool (even if they don't actually receive any)
 - and

UNLV Tip Pool Distribution cont'd

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3. Are not prohibited by law from receiving a cut of the tips

- Tip Credit: Supervisors, managers, and others who don't customarily and regularly receive tips
- Non-Tip Credit: The "employer"
 - Includes "agents" of the employer
- State Law variations

- Invalidation of tip credit
 - (Minimum wage – wage paid) X hours worked
- Reimbursement for tips wrongfully taken
- Penalties up to triple damages
- Attorneys fees (yours and theirs)
- Litigation Costs

Case Study:

The Palace Restaurant, NYC (2007)

- Tip credit illegal due to invalid tip pool
 - 15% mandatory “tip” retained by the restaurant
- **11 Food Servers:**
 - \$699,374.32 back wages (3 years)
 - +\$957,710.00 attorney fees
 - +\$59,732.54 litigation costs
 - +\$83,205.72 interest
 - = A LOT

Case Study:

La Madri Restaurant, NY (1998)

General manager received a share of the pool

- GM is included in definition of “the employer”
- Tip credit is invalid

Settlement:

- \$200,000.00 back pay and penalty (18 employees)
- \$253,780 attorney fees and costs

Case Study: *Starbucks, CA (2008)*

“Shift supervisors” receive an equal share of the collective tip jar on the counter

Trial Court: Violation of California prohibition on supervisors receiving a share of the tips

\$150 million (100,000 baristas)

Reversed on Appeal: Shift supervisors contribute to customer service and are not traditional supervisors

(Not exempt from overtime pay either)

- Retain evidence of prior notice
- Specify jobs included and excluded
- Ensure weekly compliance
 - 85% retention rule
 - Wages + tips meet minimum wage requirement
- Report tips as income