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## **Employees' Tips** **Frequently Asked Questions**

Why did the Department of Labor and Workforce Development, Wage and Hour Administration make changes to the regulation on employees' tips (8 AAC 15.907)?

The previous regulation adopted a federal tips regulation in Alaska. Since 2010, there have been multiple revisions or legal challenges to the federal tips regulation. A change to our regulation was necessary to prevent any more confusion regarding tip pooling restrictions in Alaska. By making this change, the Department is returning to its original (since Statehood) interpretation of tip pooling in order to protect and promote the welfare the wage earners of the State of Alaska and advance their opportunities for profitable employment.

What is a tip pooling arrangement?

Tip pooling or tip sharing is an arrangement that provides a method for sharing or redistributing an employee's tips.

Is an employer allowed to take control of a tip pooling arrangement?

The employer is allowed to mandate that tips be shared. However, if the employer requires the pooling of tips, only employees who customarily and regularly receive tips can participate in the tip pool.

Which employees can the employer include in an employer-mandated tip pooling arrangement?

If the employer requires a tip pooling arrangement, the employer can only require that tips be shared among regularly tipped employees. The term, "regularly tipped employees" is defined as those employees who customarily and regularly receive at least \$30 a month in tips.

Can the employer, owner or manager be included in an employer-mandated tip pooling arrangement?

No. Tips belong to the employees, not the employer or those acting on behalf of the employer, such as managers or shift supervisors who can act on behalf of the employer.

Can dishwashers and cooks working in the kitchen be allowed to participate in an employer-mandated tip pooling arrangement?

Employer-mandated tip pools can only include those employees who customarily and regularly receive at least \$30 a month in tips. Dishwashers, janitors and cooks who work out of the public eye and who do not provide direct customer service are not considered regularly tipped employees, and therefore cannot share in an employer-mandated tip pooling arrangement.

Can employers change or amend their employer-mandated tip pooling policy?

Yes. At the time of hire, employers must provide their employer-mandated tip pooling arrangement in writing and if any changes are made, written notice must be provided to all tipped personnel on the pay day before the changes goes into effect.

Can an employer mandate that customers do not leave a tip, but rather add a percentage on to the customer's bill as a gratuity?

Yes. If the employer adds an amount to the customer's bill, such as a 15% gratuity, it becomes the property of the employer and then the employer can distribute it as they see fit. If the employer distributes the money to the employee, it is considered a wage, not a tip.

What is "tip credit?"

Federal law allows employers to pay tipped employees less than the current minimum wage with the understanding that the tips the employee receives will bring their wages up to meet the minimum wage. This is known as "tip credit" and it is prohibited in Alaska. Individual states are allowed to make federal laws more strict in their own state. In Alaska, all employees must receive the full Alaska minimum wage without counting tips, unless the employee falls under some other specific exemption from the minimum wage law.

Can a percentage of the tip be retained by the employer to cover the credit card company fee?

Yes. The tip can only be reduced by the credit card fees charged for the tip itself, not for the whole bill. For example, say a restaurant bill is for \$100 and the customer adds a \$10 tip. The employer pays a 3% fee of the entire \$110 (\$3.30) to the credit card company for processing the charge. The 3% of the tip can be deducted from the employee's tip, or \$0.30. In this case, the employee would receive \$9.70 as the total tip amount.

Can the employer require that an employee give up a portion of their tips to pay for a cash register shortage or any other type of business expense?

No. Business expenses are to be borne by the employer and cannot be passed on to the employee.

I am the owner of the business and occasionally have to wait on tables. If we do not have a tip-pooling arrangement, and a customer leaves a tip on my table, can I keep it?

Yes. The customer leaves the tip to the person or persons who provide the direct service.

I am the owner of the business and occasionally have to wait on tables if we are short-staffed. We do have an employer-mandated tip pooling arrangement. Would I be able to collect my portion of the tips at the end of the shift?

**No. Tips are the property of the employees, not the employers. The employer cannot participate in an employer-mandated tip pooling arrangement.**

Is the employer allowed to hold all the credit card tips and disburse them on the next regularly scheduled payday?

**No. The employer may handle the employee's tips only for the purpose of delivering the cash amount of the tip to the employee when the customer provides for a tip on a credit card. When cash tips are left, they must be paid daily to the person tipped, no later than at the end of that person's shift.**

I am an employer with many employees. It is not practical that I disburse all the credit card tips on a daily basis. Can I set up one or two days a week to disburse the credit card tips?

**Yes. The tips must be disbursed timely and expediently, but there is no requirement to disburse credit card tips daily.**

I am an employer in a small eating establishment that has counter service only, no table service, and we leave out a "tip jar." The owner prepares the food and the owner's spouse runs the cash register. Being the only employee, am I entitled to the entire proceeds of the tip jar?

**In certain work situations, it is impossible to distinguish the recipient of the tip, such as in a food truck, or a small establishment without direct contact servers or without table service and where a tip jar is left at the cash register. Many times, the owner and/or the owner's spouse or business partner provides the direct service and they may have a single employee. To require the employer to hand over the entire contents of the tip jar to the employee would overreach the intent of the regulation. This tip pool arrangement must still be provided in writing as described in 8 AAC 15.907, but in these cases, the ownership of the tip jar contents will most likely be considered contractual per the employee's written tip pool contract.**