

Tips/Tip Pooling (“Tipping Out”)

YOUR LEGAL RIGHTS

1. What is a tip?

A tip (or gratuity) is money a customer paid to (or left for) an employee over the amount due for the goods or services sold. Tips belong to the employee, not to the employer.

2. My employer deducts my tips from my paycheck. Can she do this?

No. Your employer cannot take your tips (or any part of them), and cannot deduct money from your pay because of tips you earn. Your employer cannot credit the amount of your tips against the money she owes you. You do not have to pay back your tips to your employer, with one *exception* that is explained in Section 8 below.

3. When customers pay by credit card, my employer deducts the credit card company's fees from the tips they leave. Is this legal?

No. Since the employer has chosen to use the services of the credit card company, the employer must pay that cost. The fee is a cost of doing business that it can't shift to you.

4. I made an agreement with my employer that she can deduct my tip money from my check. Is this allowed?

No. An employer can't get around any of the laws mentioned above by getting an employee to agree to a deduction.

5. My employer pays me less than minimum wage because she includes my tips in my hourly pay. Can she do this?

No. Although some other states allow employers to pay tipped employees less, California requires that they be paid minimum wage plus tips.

6. "Tipping Out" or "Tip Pooling": I was told I have to share my tips with other employees. Since the tips belong to me, do I have to share them?

Sharing tips with other employees is called "tip pooling" or "tipping out" and is usually legal if it is common in your trade (e.g., restaurant workers). Since tips belong to the employees who helped to "serve the customer," and sometimes more than one employee "serves" a customer (e.g., cooks, bussers, and waiters all make sure the customer gets good service), it's OK for your employer to

force you to share tips with those other employees that help. As long as you only share tips with employees who somehow help the customer, and not supervisors or managers, forced tipping out is legal. However, the tip pooling arrangement must be reasonable. If you have to tip out too much to other employees, the arrangement may not be legal. For example, it is usual in the restaurant trade for a waitress to tip out 15 to 20% to other employees, so this arrangement is almost certainly reasonable. On the other hand, if a waitress has to give up 60% of the tips she collects to other employees, the arrangement is probably not legal.

7. **My employer charges customers a 15% service charge. She keeps part of it for the business, and splits the rest of it among the employees. Can she do this?**

Probably. If the customer is required to pay the charge, then it is not a tip, and your employer can keep all or part of it. A service charge belongs to the employer, not the employee. If an employer chooses to pay part of the service charge to her employees, then that money can be considered part of the employee's wages.

8. **Are all employees who receive tips protected?**

Yes, with one exception. If an employee provides a service for customers but the business doesn't charge for that service, the employee may have to pay her tips back to her employer. Examples are a valet parking attendant who parks cars for a restaurant and a coat checker in a theater where the customer is not charged for the service. The employer must still pay minimum wage, and the employee must be paid her wage or salary in full, even if the tips collected are not enough to cover the employee's wages or salary.

This fact sheet is intended to provide accurate, general information regarding legal rights relating to employment in California. Yet because laws and legal procedures are subject to frequent change and differing interpretations, the Legal Aid Society - Employment Law Center cannot ensure the information in this fact sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your rights in your particular situation.

For further information about your employment rights, please call:

The Workers' Rights Clinic

415-864-8208 (SF Bay Area) or **866-864-8208** (Toll Free in CA)

The Workers' Rights Clinic is a project of The Legal Aid Society - Employment Law Center, a non-profit organization focusing on the employment-related legal rights of low-income workers and providing free legal information on a wide range of employment-related problems.