

FLSA-604

March 26, 1976

This is in reply to your letter of November 28, 1975, which was referred to this office for a reply concerning the application of the Fair Labor Standards Act to tipped employees. The employer you represent operates a restaurant in which the waitresses pool or divide their tips with the busboys. You interpret the Senate Committee Report on this subject to mean that it is immaterial whether the sharing of tips between the busboys and waitresses is voluntary or is required by the employer. You believe that the test of whether sharing tips is voluntary or involuntary is to be applied only where the sharing of tips includes employees who do not customarily and regularly receive tips.

The requirement that an employee must retain all tips does not preclude tip splitting or pooling arrangements among employees who customarily and regularly receive tips, such as waiters, bellhops, waitresses, countermen, busboys, and service bartenders. It is not required that the particular busboys and others who share in tips must themselves receive tips from customers. Both the amounts retained by the waiters and those given the busboys are considered the tips of the individuals who retain them. Employees who share in tips are tipped employees if they receive more than \$20 a month in tips from the pool.

A valid tip pooling arrangement would include only employees who customarily and regularly have participated in tip pooling arrangements and cannot require waiters and waitresses to contribute a greater percentage of their tips than is customary and reasonable. If this requirement is met, it is not necessary that the pooling be voluntarily consented to by the employees involved. In order to provide the public with more precise guidelines, we are planning to solicit comments on this issue in the near future, following which a more detailed statement will be issued.

In your letter you also state that it is your view that the question of whether tip pooling is voluntary or involuntary arises only when tipped employees share their tips with employees who do not customarily and regularly receive tips, that is, with such employees as janitors, dishwashers, chefs and laundry room attendants. We agree with this interpretation. We do not think that Congress, even in requiring as a general principle that tipped employees retain all of their tips, intended to prevent tipped employees from deciding, free from any coercion whatever, and outside of any formalized arrangement, what to do with their tips, including sharing them with whichever co-workers they please.

Your interest in this matter is appreciated.

Sincerely,

Ronald J. James
Administrator