

## FLSA-1382

March 21, 1979

Our Regional Office in Philadelphia, Pennsylvania, has requested us to furnish you an opinion regarding a procedural policy of the \*\*\* involving the handling of employees tips.

We are advised that the company has a policy of requiring all employees who receive tips to place their tips in individual locked jar which must remain in the custody of the employing store. Once a week, the employees' tip jars are emptied into envelopes with the employees' names on them and the envelopes are given directly to the respective employees. The question at issue is whether this procedure comports with the requirements of the Fair Labor Standards Act.

Section 3(m) of the Fair Labor Standards Act, which deals with the treatment of tipped employees, makes clear that all tips received by tipped employees must be retained by them (except to the extent that a legitimate tip pool exists). This requirement was added by the 1974 Amendments. In explaining these amendments the Senate Committee on Labor and Public Welfare quoted from a portion of 29 CFR Part 531 which reads: "A tip is a sum presented by a customer as a gift or gratuity in recognition of some service performed for him . . . whether a tip is to be given, and its amount, are matters determined solely by the customer, and generally he has the right to determine who shall be the recipient of the gratuity". (Senate Report No. 93-690 February 22, 1974).

Based on what we believe to have been the intent of Congress, it is our opinion that it is not permissible under the Act to deny tipped employees the use of their tips until sometime subsequent to the dates on which the tips were given them. (In the case of tips provided by means of a credit card, we have taken the position that the employer may pay cash at the end of the shift and no later than the next regular payday. However where the tips are paid in cash, as appears to be the case here the employees must retain them.)

We have received complaints from several \*\*\* company tipped employees alleging that the manager did not return to them the full amount of tips placed in their individual tip jars. This alleged practice is likewise illegal since the tipped employees have also not retained all tips received. An investigation of such allegations would require a time consuming determination of all the pertinent facts in each individual situation and would, we believe, result in a burden on your staff as well as ours. Continuation of your company's present policies is unlawful and you should therefore change them as indicated in this letter. If such is done the basis of charges and counter-charges regarding temporary tip retention by each employing store will be removed.

The office of the Solicitor of Labor concurs in this position.

Sincerely,

Xaviar Vela  
Administrator