

Jan 25, 1983

This is in reply to your letter of _____ regarding the tip pooling arrangement of one of your clients. You ask whether the tip pooling arrangement would comply with the Fair Labor Standards Act.

You state that your client has two types of employees who share in the tips received from customers: waitresses and Japanese hibachi waiter chefs. The waiter chef brings a food order from the kitchen to a table and cooks it on a hibachi grill in front of the customers, usually eight to ten at a table. As the waiter chef is cooking the food order, he puts on a show and entertains the customers. The waitresses take the customers' food and drink orders, bring the drinks from the service bar, and bring the meal tab to the customers. The waitresses are assigned certain tables, but due to this type of restaurant operation certain sections are busy while other sections are not. Accordingly, all waitresses assist each other to maintain good service. Because the waitresses see the customers last, they receive any tips that are left. However, these tips are placed into a "tip box" with the waitress' name on it and these boxes are kept in the cashier's section. At the end of the night, the tips are counted and split 50 - 50 between the waitresses and the waiter chef(s). The waitresses then split their half of the total tips among themselves. You state that it is your understanding that this method of tip pooling is customary in this type of restaurant establishment.

Section 3(m) of the Act provides that in determining the wage of a tipped employee the amount paid such employee by his/her employer shall be deemed to be increased on account of tips by an amount determined by the employer, but not by an amount in excess of 40 per centum of the applicable minimum wage, except that the amount of the increase on account of tips may not exceed the value of tips actually received by the employee. In addition, the Act requires that (1) such employee be informed by the employer of the tip credit provision, and (2) all tips received by such employee be retained by the employee, except that it (section 3(m)) shall not be construed to prohibit the pooling of tips among employees who customarily and regularly receive tips.

2.

The Congressional Record (in particular pages 42 and 43 of Senate Report No. 93-969, February 22, 1974, copy enclosed) indicates that employees who "customarily and regularly" receive tips are waiters, bellhops, waitresses, countermen, busboys, and service bartenders. It also indicates that janitors, dishwashers, chefs, and laundry room attendants are not tipped employees.

Based on the information you provided in your letter, it appears that the waiter chefs perform duties similar to those which would be performed by countermen. In addition, it would seem that the waiter chefs serve the customers for at least as long a period of time as do the waitresses. Thus, while the information we have available shows that, in most restaurants, turning over one-half of one's tips to a tip pool is far out-of-line with industry practices, we do not believe it appropriate to disallow your client's tip pooling arrangement solely on this basis. Therefore, it is our opinion, based on the novel type of duties performed by your client's waiter chefs, that your client's tip pooling arrangement would comply with the Act.

Sincerely,

William H. Steer
Administrator

Enclosure