

PA TIP & WAGE LAW



New rules from Pennsylvania regarding tipped employees went into effect on August 5. It's important that employers who pay their workers via tips understand the changes that may affect them.

As always, this is a general guide, so if you collect tips or have employees who do, speak with an attorney about your specific considerations for these new rules



TIP POOLS

A tip pool is when a number of workers put all or a portion of the tips they earn in a given shift into the same collection pot and split them evenly (or by a set percentage) at the end of the shift.

Who can pull from tip pools?

If an employer takes a tip credit (counts tips towards meeting their minimum wage requirement), only tipped employees can contribute to and pull from the pool; if an employer doesn't take a tip credit, any non-supervisory employee can contribute to and pull from the pool.

No managers or supervisors

Employers, supervisors, and managers cannot receive tips from a tip pool. Generally, the only tips supervisors and managers are allowed to receive are tips given to them for work they directly and solely contributed to.

Record keeping

Employers who use tip pools must maintain a record of all names, positions, and money distributed to those who participated in the tip pool.



FEES & CHARGES

The new rule also implements a few changes and clarifications to services charges and credit card fees as deducted from wages and communicated to customers.

Credit card fees

Under the new rules, credit card fees and service charges are prohibited from being deducted or calculated into tipped wages.

Service charges

The rules prohibit service charges from being calculated into a total tipped-pay amount, although it does grant employers discretion about how those charges are distributed.

Customer notification

Employers must notify customers that service charges are not tips with billing statements accounting for separate lines distinguishing between tips and service charges.



"TIPPED EMPLOYEE"

There are two changes to the rules surrounding what makes someone considered a "tipped employee" for purposes of employee protections, how wages are calculated, and the implementation of the act.

Tip-earning threshold

The change increases the threshold to qualify as a "tipped employee" from \$30 a month (which is the current federal standard) to \$135 a month.

The 80/20 Rule

The new rule implements what is known as the "80/20 rule" which basically states that if employees devote more than 20% of their time doing non-tip-producing activities then they cannot receive tip wages for that work.



OVERTIME CHANGES

The rule also implements changes for calculations of overtime pay to salaried employees by re-configuring how "weekly compensation" is calculated. Basically, an employee's salary should now be calculated by adding weekly compensation and dividing by 40, then providing overtime pay of 1.5 times that regular rate in

excess of any hours more than 40 worked in that week. We recommend speaking to a lawyer if you have salaried nonexempt employees who qualify for overtime to make sure you are paying them in compliance with the rule change.

CONSIDERATIONS FOR A FOOD & BEV BUSINESS

THERE ARE MANY THINGS TO THINK ABOUT WHEN IT COMES TO WHAT YOUR BUSINESS NEEDS & HOW IT IS PROTECTED. HERE ARE JUST A FEW.



CONTRACTS

Having solid contracts for your business relationships can not only help in the event there is disagreement, they're helpful to establish a clear parameter for the way a relationship is organized. These can come in handy with your suppliers, wholesalers (or if you are the supplier!), non-disclosure agreements for trade secrets like recipes, and in many more situations.



ENTITIES

Forming a Limited Liability Company (LLC) or another type of entity for your business can be a great option to protect your personal assets, have a structure for growth for your business, and have formal documentation if you want to apply for grants, loans, and other programs. If you don't have an entity and are doing business by anything other than your name, you will still need to file a fictitious name or DBA ("doing business as") with the state.



HEALTH CODE & ZONING

Making sure you have the right health and safety measures (and legal requirements) in place for your specific food + bev business is crucial. Whether that's making sure you have the right kitchen setup and that your space is zoned for the use you want to provide to customers. This is one where it's definitely important to talk with an attorney for your specific needs.

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