What is a tip?

A tip is an amount, totally at the discretion of the customer, given to an employee for prompt, courteous service.

Who is a tipped employee?

Wisconsin law defines a tipped employee as any employee in an occupation in which he or she customarily and regularly receives tips from patrons or others.

Federal law defines a tipped employee, for minimum wage purposes, as any employee engaged in an occupation in which he or she customarily and regularly receives more than $30 per month in tips. ($20 per month for IRS tip reporting purposes.)

What is a tip credit?

A tip credit, or “tips deemed to be wages,” is the amount of reported tips that the employer may use to offset the minimum wage. Employers currently may use a tip credit of $4.92 per hour for most employees and $3.77 per hour for employees subject to the opportunity wage rate. The rates below reflect the current state/federal minimum wage and must be adjusted whenever the minimum wage changes.

<table>
<thead>
<tr>
<th>Wi. &amp; Fed. Min. Tipped Employee</th>
<th>Tip Credit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wage</td>
<td>Base Wage</td>
</tr>
<tr>
<td>Regular wage $7.25 =</td>
<td>$2.33*</td>
</tr>
<tr>
<td>Opportunity $5.90 =</td>
<td>$2.13</td>
</tr>
<tr>
<td>wage (see “Minimum Wage” guide for definition)</td>
<td></td>
</tr>
</tbody>
</table>

* The federal cash wage for adult tipped employees is $2.13, however Wisconsin's rate of $2.33 is more favorable for employees and is the rate that should be used.

Employees not reporting enough tips to meet the tip credit

If the employee does not report earning enough tips during the work week to equal the tip credit, the employer cannot take a full credit. The employer must increase the base wage of the employee until the employee's reported tips and base wage together equal the required minimum wage for that work week.

Tip declaration and “substantial evidence” requirements

Wisconsin law requires an employer taking a tip credit to:

- have a tip declaration signed by the tipped employee each pay period
- show on the payroll records that the combined wages and tips for each employee constitute at least the minimum wage
- show that required social security and other taxes have been withheld.

Federal law requires the employer to be able to present “substantial evidence” to support the validity of the amount of tips received by the employee and the tip credit taken, as well as required social security and other taxes being withheld.

Employers must also notify the employee that a tip credit is being taken. In the spring of 2011, the federal Department of Labor (DOL) issued specific requirements about the notification that must be provided to tipped employees before the employer may use the tip credit:

- amount of direct base/cash wage to be paid to the employee (in Wisconsin the minimum base/cash wage is $2.33 an hour)
• Amount the employer claims as a tip credit (e.g. the difference between $2.33 and $7.25 an hour)
• The tip credit can’t exceed actual tip earnings
• Employers can’t claim the federal tip credit unless they inform employees of the federal law’s provisions on the tip credit
• The law requires that employees retain all their earnings, with the exception of contributions to valid tip pools (more on tip pools below)

While this notification can be done verbally, its is strongly recommended that employers provide written notice, to make the evidence of their compliance indisputable. WRA created a basic template that you can use for this purpose. You are responsible for informing each employee of their specific base/cash wage and the amount of tip credit being taken. This information may vary from employee to employee within in a business. The “Tip Credit Employee Notification” form is in the Frequently Used Forms Section of the HERO and online in Members Only.

**Tip reporting**

Because of the importance of honest, accurate tip reporting, the employer should monitor an employee’s tip reporting on a regular basis. Employees are required by law to report 100 percent of their tips. Employees who do not properly report their tips can be disciplined.

Tip reporting can be used as an effective way of evaluating employee performance: tips which are consistently below those of other employees may represent poor customer service.

**Whose property are tips?**

Generally, tips are the property of the employee who received them.

**Tip pooling**

Tips belong to the employees. Therefore, employees must agree among themselves to pool tips and must be responsible for handling all money, with one exception: employers may require employees’ tips to be pooled as long as that amount does not exceed a percentage of tips that is “customary and reasonable.” In the past, the NRA and WRA had advised employers that the federal DOL would consider tips pools with a maximum threshold of 15% to be valid.

Currently, the law does not impose a maximum contribution percentage, so that percentage is up to the employer. You must notify your employee how much they will be required to contribute to the tip pool.

Until 2018, mandatory, management-run tip pools could only include “front of the house” personnel. Eligible employees include bellhops, waitstaff (dining and cocktail), bussers, bartenders, captains, hosts and counterpersons who serve customers.

However, the federal DOL issued a rule change in the spring of 2018 that allows employers to have a tip pool in which tips are shared with non-tipped employees including back of the house staff (e.g. dishwashers and cooks), if tipped employees (e.g. servers, bussers, bartenders) are paid the full minimum wage (currently $7.25 per hour). Be mindful that owners, managers and supervisors (“agents of the business”) can never participate in a tip pool. If an employee earns most of their pay through tips, but also has a very limited supervisory role, they are still allowed to participate in a tip pool.

If tipped employees are paid under the full minimum wage because the tip credit is being used, this new rule doesn’t apply to them and they still cannot be required to share their tips with customarily untipped kitchen employees such as dishwashers, cooks, or janitorial staff.

Employers who illegally require invalid tip pools can lose their rights to take a tip credit for any tipped employee. A penalized employer will have to pay the full minimum wage for every employee.

**What about service charges?**

Service charges are not tips for the purposes of either state or federal law. Unlike tips, which are given directly to the employee by the customer, a service charge is deemed to be the property of the

Questions? Contact the WRA Hotline: 800-589-3211 or hotline@wirestaurant.org

Created 01-99 / Last reviewed 04-19
employer because it is a required payment. (See Q&A for more on tips vs. service charges.) The Wisconsin Department of Revenue requires that sales tax be collected on service charges.

Service charges distributed to employees must be reported as wages, not tip income, and should be distributed through the regular payroll system. This income must be reported as straight-time pay and may not be used to satisfy overtime pay obligations.

When filling out Forms #8846 and #8027, the IRS is clear that service charges should not be included in any calculation that arrives at an hourly tip rate, a tip rate calculated on a percentage of sales or any other rate determination method. A service charge becomes gross revenue and must be reported as such. Management may use the service charge in any manner (e.g., keep it all, allocate any part or all of it to employees, etc.).

**Charged tips**

The IRS recommends that charged tips be distributed through the regular payroll process with taxes withheld, rather than directly to the employee as cash. These are not regular wages, but are classified and treated as tips.

**Set-up/clean-up time**

In general, an employer should be able to take a tip credit for all hours worked by an employee, even though no tips are earned during the set-up and clean-up times, as long as those job assignments are a legitimate part of the overall assignment of being a server and do not constitute a different job description, such as janitorial, etc. However, federal and state law differ on the amount of time that may be spent in non-tip producing duties.

In the past, the federal DOL generally allowed 20 percent of the tipped employee’s time to be spent doing incidental work that was non-tip producing. However, in 2019 an opinion letter from DOL indicates they “will no longer prohibit an employer from taking a tip credit based on the amount of time an employee spends performing duties related to a tip-producing occupation that are performed contemporaneously with direct customer-service duties or for a reasonable time immediately before or after performing such direct-service duties.”

DOL provided guidance on duties that would be considered “core or supplemental” as those outlined in the tasks section of the Occupational Information Network (O*NET link) summary report for tipped positions like “waiters and waitresses” and “bartenders.” Employers should compare job duties outlined on the O*NET website (www.onetonline.org) with their tipped employees’ job requirements to determine whether the side-work being required is considered acceptable by DOL.

However, the Wisconsin Department of Workforce Development’s (DWD) position is that up to 1/3 of an employee’s time per shift can be spent in non-tip-producing activities (this would be work related to the overall assignment of being a server like preparing the dining room, folding napkins and making coffee. If more time than this is spent in non-tip producing activities the employer cannot pay the employee the tipped rate. The employee would have to receive at least the regular minimum wage rate per hour.

To summarize, despite the DOL rule change in 2019 which lifted their 20 percent restriction, the amount of time tipped employees in Wisconsin spend on sidework cannot be radically changed because DWD still limits it to 1/3 of the employee’s time per shift.

**Payroll taxes and deductions**

**FICA (social security tax)**

All reported tips are subject to both FICA taxes paid by the employee and FICA tax contributions paid by the employer.

**FUTA (federal unemployment compensation tax)**

All reported tips are subject to FUTA.

**Wisconsin UC (state unemployment compensation tax)**

All reported tips are subject to Wisconsin UC tax.

Questions? Contact the WRA Hotline: 800-589-3211 or hotline@wirestaurant.org

Created 01-99 / Last reviewed 04-19
Priority of withholding taxes

It is possible that there may not be enough cash wages available on an employee’s paycheck to pay the taxes due on the cash wages plus tips reported. Therefore, there is a priority in withholding taxes:

1. Employee’s share of social security on cash wages (exclusive of tips).
2. Federal income tax on cash wages (exclusive of tips).
3. State withholding on cash wages (exclusive of tips).
4. Employee’s share of social security on tips.
5. Federal income tax on tips.
6. State income tax on tips.
7. Balance due on taxes carried forward from previous paychecks.
8. Other payroll deductions.

Any balance of taxes due is carried forward to be taken out of future checks. However, the employer may receive money from the employee to pay those taxes.

Meals and lodging

Wisconsin law provides that deductions for meals and lodging may be made only for bona fide meals consistent with the employee’s work shift. No deductions can be made or credit given for meals not eaten except in employment where weekly room and board is provided and accepted. An employer cannot require that meals be accepted as partial payment of wages.

When meals and/or lodging are furnished by the employer and accepted by the employee, a credit, not to exceed the following amounts, may be deducted from wages:

Lodging -- for non-opportunity wage employees, $58.00/week or $8.30 day. For opportunity wage and minor employees, $47.20/week or $6.75/day.
Meals -- for non-opportunity wage employees, $87.00/week or $4.15 meal. For opportunity wage and minor employees, $70.80/week or $3.35/meal.

How much tip income is an employee required to report?

Federal law and the IRS require tipped employees to report 100 percent of their tips. If they do not report all tips, they are breaking the law. The employer is required to inform the employee that the law requires them to report all of their tips. However, it is not the responsibility of the employer to enforce this law beyond informing and filing required reports with the IRS.

Substantiation of tipped income

An employee is required to maintain “sufficient evidence” to establish the amount of tip income received. That evidence consists of either a daily tip record or other evidence of daily tip income received that is “as credible and reliable as daily record.”

IRS form 4070A, Employee’s Daily Record of Tips, may be used. Each entry must be made on or near the day the tip is received.

The IRS says “other evidence” should consist of documents such as copies of restaurant bills or credit card charges that show the amount of tips added to checks by customers or amounts from which tips are paid. In case of an audit, it is in the employer’s best interest to have seven years in back records to establish a clear picture of actual income.

IRS employer tip reporting requirements

IRS Form #8027:
Employers Annual Information Return on Tip Income and Allocated Tips

Some restaurants, but not all, are required to file IRS Form #8027, Employers Annual Information Return on Tip Income and Allocated Tips. On the form, employers must list the business’s annual gross sales (explained on next page) and the total amount of tips reported by all tipped employees for the year.
The total of reported tips on the #8027 must be at least 8 percent of total reported sales. If reported tips do not equal 8 percent of sales, the restaurant must “allocate” on to individual tipped employee’s W-2 forms enough in unreported tips to bring the overall amount of tips up to 8 percent of sales. The allocation is not an additional amount due to the employee. Rather, it is an amount the IRS assumes the employee should have reported and paid taxes on.

Who must file IRS form #8027?

Only employers of “covered establishments,” as defined on the next page, must file Form #8027. However, if you receive a request for a Form #8027, even though you are exempt, you must respond by sending a copy of the request and an attached statement explaining why you believe you are exempt, including your calculations as shown on the next page.

All #8027 forms are typically due February 28 of each year. Electronic filings are due later.

Covered establishments

Food and beverage establishments where tips are customarily received and which employ more than 10 employees (not only tipped employees) on a typical business day must file Form #8027.

- “Ten employees on a typical business day” is defined as 80 employee hours.
- All establishments under the same ownership must be considered together for the 10 employee/80 employee hours test.
- Management, staff and any employee who owns 50 percent or more in value of stock of a corporation operating an establishment may be excluded when computing employee hours.

To determine the number of employee hours on a “typical” business day, you may average a typical day in your best month with a typical day in your slowest month.

Example: Best month - December
Employee hours worked: 5,000

Days open: 29
5000 divided by 29 = 172 average hours per day

Slowest month - April
Employee hours worked: 1330
1330 divided by 30 = 44 average hours per day

Total hours per day for both months: 44 + 172 = 216
216 divided by 2 = 108
Average hours per day is 108

Thus, this establishment is covered because the number of employee hours on a typical business day exceeds 80.

Determining gross sales

For the purpose of determining 8 percent of gross sales, whether allocation is necessary and in what amount, some parts of the operation may be exempted.

The following may be deducted from gross sales:
- Sales tax.
- Sales of non-food items.
- Carry-out sales - a good faith estimate of carry-out trade as a percentage of total sales is sufficient if sales are not recorded separately.
- Employee meals that are recorded.
- Discounts or coupons if rung up as part of gross sales.
- Free beverages or meals.
- Sales on which a mandatory service charge of 10 percent or more is assessed. (“Service charge” means an amount negotiated in advance or of which the customer is informed in advance, and is mandatory and not at the discretion of the customer. Whether or not any part of it is paid out by the employer to the employee is not relevant for this purpose. See the section on service charges.)
• Sales from separate functions of the establishment where tips are not customarily received such as a bar, buffet, etc. may be exempt if gross receipts are recorded separately for each such function. (If the bar is to be exempt because employees are not customarily tipped, cash sales over the bar must be recorded separately from bar sales to the restaurant, on which tips would customarily be received by the dining room waitstaff.)

**How to allocate**

There are two ways of allocating tips:

• **Good faith agreement** -- A written agreement between the employer and at least two-thirds of the tipped employees of each occupational category receiving tips. A good faith agreement becomes effective for the payroll period that begins after the date of adoption, but no later than January 1 of the next year. If tips are allocated according to a good faith agreement, a copy of that agreement must be attached to Form #8027.

• **IRS allocation formula** -- A worksheet describing two formula methods of allocation is attached to Form #8027
  a. Gross receipts formula -- Employers with 25 or more full-time equivalent employees (i.e. 1,000 or more employee hours) per weekly pay period, including tipped and non-tipped employees, must use this “gross receipts attributable” formula if there is no good faith agreement in place.
  b. Hours worked formula -- Only employers with fewer than 25 full-time equivalent employees (i.e. less than 1,000 employee hours) per weekly pay period may use this allocation method. Under this formula, the percentage of allocation is determined by dividing the total number of hours worked by all directly-tipped employees by the number of hours worked by each individual directly-tipped employee.

**Appeals**

If the 8 percent allocation threshold is not reasonable for your operation because tipped employees are not reporting 8 percent of gross sales in tips (although they may be receiving more than they are reporting), you or your employees may petition the IRS for a reduction in the threshold for your operation.

The threshold may be reduced to as low as 2 percent upon written application setting forth sufficient information (such as charged tip rates, type of establishment, menu prices, hours of operation, type of clientele, location and amount of self-service) to support the argument that tips received by employees of the establishment are customarily below 8 percent. Refer to Form #8027 Instructions for complete information.

Appeals for reduced allocation thresholds should be filed as soon as possible before the Form #8027 filing due date (typically February 28 for paper filings) with: IRS - National Tip Reporting Compliance, 3251 North Evergreen Dr. NE, Grand Rapids, MI 49525.

Employees may petition the IRS themselves for a reduced allocation threshold if the petition is consented to by a majority (more than half) of the directly tipped employees of an establishment. These employees have the burden of supplying sufficient information to allow the IRS to estimate the tip rate of the establishment. However, the employer must provide relevant information to the IRS upon request of the employees or the IRS. The information will remain confidential.

**Employees must report tips**

Employers must allocate if covered

The IRS is increasing its efforts to detect tip reporting deficiencies. Undercover work and audits are yielding millions of dollars in new tax revenue for the federal government. The courts have upheld IRS tip estimates and subsequent income tax bills to employees for unreported tips of up to 14 percent of gross sales at some establishments as a result of audits.

Questions? Contact the WRA Hotline: 800-589-3211 or hotline@wirestaurant.org

Created 01-99 / Last reviewed 04-19
The most important thing for the employer to remember is that under-reporting tips by your employees may mean that you have to go through the hassle of allocation. You also may be charged a lump sum for several years worth of back FICA taxes due on unreported tips.

Let the employees know:
- The law requires them to report all of their tips.
- Employers must allocate tips up to 8 percent of gross sales, if reported tips do not reach that amount.
- The IRS may audit and bill them for taxes on estimated tip amounts greater than the 8 percent allocation -- plus penalties for underreporting.

**Employer FICA income tax credit**

As an employer in the food and beverage industry, you may be entitled to a credit for the social security and Medicare taxes you pay on your employees’ tip income. This credit is available under Internal Revenue Code (IRC) section 45 B, “Credit For Portion Of Employer Social Security Paid With Respect To Employee Cash Tips.” To file for the credit, use IRS Form #8846. You must meet both of the following requirements to qualify for the credit:

1. You had employees who received tips from customers for providing, delivering, or serving food or beverages for consumption; and
2. You paid or incurred employer social security and Medicare taxes on these tips.

The IRC section 45 B credit is available for taxes paid after December 31, 1993. You can claim or elect not to claim the credit anytime within three years from the due date of your return on either your original return or an amended return.

Since it is an income tax credit, claimed on an income tax return, you may use it to offset any regular income tax liability, but not employment tax liabilities. A credit is a dollar for dollar reduction of your regular tax liability, where an expense deduction only reduces your taxable income. You and your accountant should evaluate, annually, whether the credit or the expense deduction is more beneficial to you.

The IRC 45B credit is not refundable which means if the credit reduces your regular income tax below zero, to a negative amount, the negative amount is not sent to you as a tax refund. However, it is subject to carry back and carry forward provisions of the IRC, as are other components of the business tax credit. Credits arising in tax years beginning after December 31, 1997 may be carried back one year and forward 20 years. Credits arising in tax years beginning before 1998 may be carried back three years and forward 15 years.

**Example:** An employee works 35 hours this week and reports $200 in tips. The employee’s base wage is $2.33 per hour. In 2007, the IRS froze the minimum wage rate at which the credit is computed at $5.15 per hour. This will remain the same even when the minimum wage increases.

\[
\begin{align*}
\text{Minimum wage} &= 5.15 \\
\text{Base wage} &= 2.33 \\
\text{Tip credit} &= 2.82 \\
\text{Tip credit} &= 2.82 \times 35 \text{ hours} \\
&= 98.70 \\
\text{Tips reported} &= 200.00 \\
\text{Tips to satisfy min. wage} &= 98.70 \\
\text{Tips eligible for tax credit} &= 101.30 \\
\text{Tips eligible for tax credit} &= 101.30 \times 0.0765 \\
\text{FICA tax rate} &= 7.75 \\
\text{Amount of tax credit} &= 7.75 \\
\text{Potential annual savings per employee} &= 7.75 \times 52 \text{ weeks} \\
&= 403.00
\end{align*}
\]

**Questions? Contact the WRA Hotline: 800-589-3211 or hotline@wirestaurant.org**

Created 01-99 / Last reviewed 04-19
TIPS AND TAXES
Frequently Asked Questions

Q: Our restaurant’s bussers receive tip outs from the waitstaff. Do I have to keep track of this money?
A: Yes. All employees who receive more than $20 per month in tips must report 100 percent of their tips and pay taxes on them. This includes bussers, bartenders and any other employees who hit that $20 mark, even if they are being paid full minimum wage or more.

Q: How can I handle a server whom I strongly suspect is underreporting tips?
A: As an employer, your responsibility is only to inform your employees about their 100 percent tip reporting obligation and to file the required reports with the IRS. However, because you probably don’t want to pay extra base wages to a server who doesn’t report enough tips to allow you a full tip credit, and you don’t want to hassle with allocating tips at tax time, you have good reason to be upset with obvious underreporting of tips.

If your server reports substantially poorer tips than his/her co-workers, you may tell them it must be a sign of bad customer service -- if their service and tips don’t improve soon, you will have to let them go. Also, remind them that you could be audited and if auditors find them to be underreporting tips, your server could pay stiff penalties.

Q: Our policy is to add a 15 percent gratuity onto the bills of large parties. Between the meal and drinks, the sales tax and the gratuity, how do I figure the bill?
A: Your 15 percent gratuity is a required payment -- therefore it is not a voluntary tip but a service charge in the eyes of the law. While tips go to servers, service charges go to the business and the restaurant must collect sales tax on the charge.

The proper way to calculate the bill is to add the cost of the meal and the drinks; then calculate and add the service charge; finally, figure the sales tax and add it to the total.

Q: Many of our customers leave tips on their credit cards. I don’t receive the whole amount of the tip back from the credit card company because of their charges and I don’t receive the money until weeks later. My servers expect to be paid the whole tip on that night. What do I have to do?
A: When tips are charged on credit cards, you are allowed to deduct from the tip the same percentage as the credit card company charges you. If you pay the credit card company a 2 percent discount rate, you can deduct 2 percent from the server’s tip. Example: the customer charges a $10 tip and you give the server $9.80.

You do not have to pay your server the same night the tip is earned but, regardless of when you receive the money from the credit card company, you do have to pay your server by the next regular payday. WRA recommends charged tips be paid out through the regular payroll. This ensures that there will be enough money on the employee’s check to cover taxes and other deductions.
Q: I remember hearing something a few years ago about IRS enforcement of service charges as wages. What changed?

A: You are right, member restaurants and accounting firms have been receiving notification from the IRS reinforcing their position after IRS Revenue Ruling 2012-18 issued June 2012 that IRS tax examiners must ensure that distributed service charges are properly characterized as wages and not tips. U.S. Department of Labor (DOL) regulations, IRS interpretations, and Wisconsin law distinguish between a tip voluntarily paid by a customer and a mandatory service charge imposed upon the customer.

What Is a “Tip” and What Is a “Service Charge”?

A service charge is a gratuity automatically added to a customer’s bill by management. A tip is a gratuity voluntarily added to the bill by the customer. The IRS lists four factors, all of which must be present in order for the customer’s extra payment to be deemed a tip:

- The customer’s payment must be made free from compulsion;
- The customer must have the unrestricted right to determine the amount;
- The payment should not be the subject of negotiation or dictated by the employer policy; and
- Generally, the customer has the right to determine who receives the payment.

Similarly, under Wisconsin state law, Wis. Admin. Code Sec. 272.03(2)(c), the customer must have the sole discretion to determine whether a gratuity is to be given, to whom it is to be given, and the amount.

Examples

The IRS Rev. Rul. gives the following examples to distinguish when a gratuity left by the customer will be considered a “tip” or “service charge”:

Example 1: A restaurant’s menu specifies that an 18 percent gratuity will be added to all customer bills. A customer’s bill for food and beverages includes an amount on the “tip line” equal to 18 percent of the price for food and beverages and the total includes this amount. The restaurant distributes this amount to the servers and bus persons. Under these circumstances, the customer did not have the unrestricted right to determine the amount of the payment because it was dictated by employer policy. The customer did not make the payment free from compulsion. The 18 percent gratuity is not a tip within the meaning of section 3121 of the federal tax code. The amount included on the tip line is a service charge dictated by the restaurant.

Example 2: A restaurant includes sample calculations of tip amounts beneath the signature line on its charge receipts for food and beverages provided to customers. The actual tip line is left blank. A customer’s charge receipt shows sample tip calculations of 15 percent, 18 percent and 20 percent of the price of food and beverages. The customer inserts the amount calculated at 15 percent on the tip line and adds this amount to the price of food and beverages to compute the total. Under these circumstances, the customer was free to enter any amount on the tip line or leave it blank; thus, the customer entered the 15 percent amount free from compulsion. The customer and the restaurant did not negotiate the amount nor did the restaurant dictate the amount. The customer and the restaurant did not negotiate the amount nor did the restaurant dictate the amount. The customer generally determined who would get the amount. The amount the customer entered on the tip line is a tip within the meaning of section 3121 of the federal tax code.

Effect if Gratuity Is a Service Charge

If the gratuity is deemed to be a service charge rather than a tip, under federal law, service charges:

- belong to the establishment
- become a part of the establishment’s gross receipts
- and must be considered as income to the employer may be retained entirely by management or distributed to employees in any amount management chooses.

Questions? Contact the WRA Hotline: 800-589-3211 or hotline@wirestaurant.org
Service charges that get distributed to employees are treated as wages under federal law. Distributed service charges may be used to help employers meet their obligation to pay employees the minimum wage.

However, a compulsory service charge cannot be counted as a tip and used as tip credit. Thus automatically added or mandatory gratuities, e.g., for large parties or catered events, are service charges, not tips, and employers cannot take a tip credit, even if management passes the gratuity to employees. Instead, the mandatory-gratuity receipts would be considered part of the employer’s receipts. Money paid from those receipts to employees would be considered wages rather than tips. The DOL maintains that a compulsory service charge is not a tip and cannot be counted as a tip even if the employer distributes the service charge to employees.

Customer Notice of Service Charges:

It is important for restaurants to inform guests of service charges and the amount of the charge before the guest orders, either by a conspicuous notice on the menu or some other means. It is also now important as a result of the U.S. DOL’s new tip credit notice regulations issued May 5, 2011 that employers notify tip employees of specific information concerning tips and tip credit. Contact WRA or log onto http://www.wirestaurant.org/pdf/membership/ Tip_Credit_Employee_Notification.pdf to see the information you must now provide.

The WRA’s Tip Credit Employee Notification form is included in the Frequently Used Forms section of your HERO manual.

Make sure your accountant or bookkeeper is aware of this issue. WRA will keep members informed as we learn more about how this is being enforced.

Q: What are the new tip pool rules?

A: A new provision included in the $1.3 trillion spending deal signed by the President on March 23, 2018 allowed some restaurants to expand the scope of their tip pools. The deciding factor is if you use the tip credit or pay tipped employees the full federal minimum wage of $7.25 per hour or higher.

What you need to know:
• If you pay your tipped employees (e.g. servers, bussers, bartenders) under $7.25, the new tip pool rules don’t apply to you and nothing has changed. Your restaurant still can’t share pooled tips with the back of the house (e.g. dishwashers and cooks).

• If you pay your tipped employees (e.g. servers, bussers, bartenders) the full minimum wage of $7.25 – or more, you are now able to have a tip pool in which tips are shared with non-tipped employees including back of the house employees (e.g. dishwashers and cooks).

Keep in mind, “agents of the business” like owners, managers and supervisors still cannot be included in a tip pool. So whether you take the tip credit or not, no tip pools are allowed to include owners, managers or supervisors.

The Department of Labor’s Field Assistance Bulletin instructs employers to use the “duties test” (visit www.dol.gov/whd/overtime/fs17a_overview.pdf) to determine who qualifies as a supervisor or manager and establish tip pool eligibility. Basically, if an employee earns most of their pay through tips, but also has a limited supervisory role, they are still allowed to participate in a tip pool.

This new rule change helps modernize tip pools (for eligible employers) and underscores the concept that the entire restaurant staff contributes to the success of customers’ meals and dining experiences.

Questions? Contact the WRA Hotline: 800-589-3211 or hotline@wirestaurant.org
Created 01-99 / Last reviewed 04-19