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New Regulations Regarding Tipped Employees in Pennsylvania

Pennsylvania employers must take note of major changes to Pennsylvania's regulations regarding tipped employees that will take effect on August 5, 2022. Many of these changes differ from federal law, but must be followed, because the federal Fair Labor Standards Act states that any state law more favorable to employees than the FLSA will take precedence. Key changes are as follows:

- In order to qualify as “tipped employees,” the employees must be engaged in an occupation in which they “customarily and regularly” receive more than \$135 per month in tips. The federal threshold remains \$30.
- By contrast with federal law, Pennsylvania employers will now be officially prohibited from deducting credit card processing and other fees from employee tips.
- When an employer takes a tip credit, any tip pool must be limited to employees who “customarily and regularly” receive tips. If the employer does not take a tip credit, the pool may include non-tipped employees, like cooks and dishwashers, but may never include the employer or its managers. This change is consistent with current federal law. Pennsylvania will also now require that the employer track and keep records of which employees participate in the tip pool and how much they receive.
- Also consistent with federal law, Pennsylvania will now officially recognize the “80/20 rule” regarding tip-producing work (e.g., serving) and related non-tip-producing work (like folding napkins) that is reflected in 29 C.F.R. § 531.56. In sum, an employer may not take a tip credit for an employee's time spent doing non-tip-producing work if that time exceeds 20% of the employee's total shift time or occupies more than 30 consecutive minutes. <https://www.law.cornell.edu/cfr/text/29/531.56>
- Again like federal law, Pennsylvania will now officially distinguish between tips voluntarily left by a customer and service charges imposed on customers by the employer. When service charges are distributed to employees, they are considered wages and must be included in calculating their regular rate of pay. Service charges cannot be used to satisfy the employer's tip credit, however.

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- Pennsylvania will now require that notice of service charges be made to an employer's customers in specific ways, particularly informing the customer that those charges are for administration of the function for which the charge is made, and are not a substitute for tips. The billing statement must contain separate lines for service charges and tips.

Employers are encouraged evaluate their tip policies and practices to ensure compliance. Stokes Wagner is always available to answer any questions.

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