

## **Dealing with Tipped Employees: California Court of Appeal Reverses \$105 Million *Starbucks* Verdict**

**June 5, 2009**

In a decision with significant implications for California employers of tipped employees, on June 2 the California Court of Appeal reversed the decision of the San Diego Superior Court in *Chau v. Starbucks Corp.*, Case No. GIC836925. That decision had awarded more than \$100 million in restitution and interest to a class of former Starbucks “baristas” in California because tips in a collective tip jar had been shared with shift supervisors who worked with the baristas behind the counter. The Court of Appeal concluded that California law does not prohibit the practice of allowing supervisors to share in the tips placed in a collective tip jar. California only prohibits employers from sharing in tips given individually to one service employee. Starbucks’ policy was to allot service employees a portion of the tips from a collective tip jar based on the number of hours each employee had worked.

A key issue was whether Starbucks’ policy of allowing the sharing of collective tips among baristas *and shift supervisors* amounted to the employer taking tips from the baristas, since shift supervisors acted in a quasi-supervisory capacity. The plaintiffs argued that Starbucks’ tip-pooling policy was illegal because shift supervisors were “employers” or “agents” of the employer and therefore not entitled to a share of the tip pool. Cal. Lab. Code § 351 (West 2006). The San Diego Superior Court agreed, ruling that the shift supervisors were “agents precluded from sharing in tips from the tip pool.” In addition to awarding more than \$86 million in restitution and \$19 million in interest, the court enjoined Starbucks from engaging in the practice of allowing nonexempt shift supervisors to share in tips.

The Court of Appeal, however, found that whether the shift supervisors qualified as “employers” or “agents” was irrelevant because California law only bars “employers” and “agents” from taking tips from *other* employees, not from receiving tips from customers. The shift supervisors spent 90%–95% of their time performing the same “behind the counter” duties as baristas, such as pouring coffee and waiting on customers. From the perspective of customers leaving tips in the collective tip jar, baristas and shift supervisors were largely indistinguishable. Thus, the logical conclusion (which plaintiffs did not dispute) was that tips left in the collective tip jars were intended for the baristas *and the shift supervisors*—the entire team that had serviced the customer. Starbucks’ store managers and assistant store managers, who did not customarily perform such service duties, were not included in the tip-pooling practice. The Court of Appeal noted that shift supervisors would not be prohibited from receiving tips directly from customers and, therefore, there was no reason that they could not receive a fair portion of the tips left in the collective tip jar for the service team, of which they were members. In addition, the Court of Appeal found that sharing tips with shift supervisors would not contravene the Labor Code section’s purpose of preventing the public from being “deceived” when leaving tips for employees.



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