

Dealing with Tipped Employees: The Implications of the \$105 Million *Starbucks* Verdict

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In a decision that sent shock waves through the restaurant industry, with implications for businesses that rely upon “tipped employees,” a San Diego Superior Court judge issued a decision in *Chau v. Starbucks Corp.*, Case No. GIC836925, on March 19, awarding more than \$100 million to a class of former Starbucks “baristas” in California. The award gave restitution for tips illegally paid to “shift supervisors” through the tip-pooling practice utilized by Starbucks. Not surprisingly, following the court’s ruling, at least three additional class actions accusing Starbucks of illegal tip-pooling practices were subsequently filed in state and federal courts across the country, including in New York, Minnesota, and Massachusetts. More suits are expected, as more than 30 states have enacted some form of “tip” law. The *Starbucks* verdict and these lawsuits have significant implications for any employer that relies upon “tipped employees.”

In the San Diego case, the plaintiffs, who were responsible for making Starbucks drinks, serving customers, and working the cash registers, were paid in part through tips contributed by Starbucks patrons to tip jars located at the register. Each Starbucks store distributed the tips not only among the baristas, but also among the shift supervisors, who were responsible for pouring coffee and waiting on customers in addition to their supervisory duties of assigning tasks to the baristas and ensuring that customer service standards were met. The plaintiffs argued that Starbucks’ tip-pooling policy was illegal under the California Labor Code, since shift supervisors were “employers” or “agents” of the employer who were not entitled to a share of the tip pool. Cal. Lab. Code § 351 (West 2006). In finding for the plaintiff class, the court ruled, in a four-paragraph letter to counsel, that the shift supervisors are “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 distributing tips to shift supervisors. The New York, Minnesota, and Massachusetts suits soon followed.

In a decision involving another category of tipped employees, a district court in Florida held that poker dealers at the Palm Beach Kennel Club were entitled to proceed to trial on their claims that their employer violated the Fair Labor Standards Act (FLSA) by taking tip credit and paying them less than the minimum wage, while requiring them to share part of their tips with cardroom floor supervisors. *Wajcman v. Palm Beach Kennel Club*, No. 07-80912-CIV-Hurley/Hopkins, 2008 U.S. Dist. LEXIS 21939, at *7–8 (S.D. Fla. Mar. 20, 2008).

Application of the Fair Labor Standards Act to Tip Pooling

While the plaintiffs in the *Starbucks* cases are relying upon state law, employers should be aware of the issues affecting tipped employees under the FLSA. The FLSA offers a “tip credit” to employers, which

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