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California Court Of Appeal Clarifies Rules Regarding Tips

On June 2, 2009, the California Court of Appeal in San Diego issued a decision clarifying California's rules regarding tip-sharing among employees. In doing so, the Court of Appeal reversed the trial court which had awarded the plaintiff class $86 million in restitution.

Jou Chau, a former Starbucks "barista," brought a class-action challenging Starbucks' policy permitting certain service employees, known as shift supervisors, to share in tips that customers place in a collective tip box. Chau alleged that the policy violated California Labor Code section 351 that reads in pertinent part:

> "No employer or agent shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron . . . .Every gratuity is hereby declared to be the sole property of the employee or employees to whom it was paid, given, or left for."

Rejecting plaintiff's arguments, the Court concluded that an employer can require the equitable allocation of tips placed in a collective tip box for those employees providing service to the customer. The Court explained that there is no California law prohibiting an employer from allowing a service employee to keep a portion of the collective tip, in proportion to the amount of hours worked, merely because the employee also has limited supervisory duties.

The evidence at trial showed that Starbucks stores are staffed by several categories of employees: baristas, shift supervisors, assistant store managers, and store managers. Baristas are entry-level, part-time hourly employees responsible for customer service related tasks, such as working the cash register and making coffee drinks. Shift supervisors are also part-time hourly employees who perform all the duties of a barista, but are also responsible for some additional tasks, including supervising and coordinating employees within the store, opening and closing the store, and depositing money into the safe. Shift supervisors have no authority to hire or fire baristas, and have no authority to discipline a barista verbally or in writing or to issue unsatisfactory performance reviews. Shift supervisors are not considered part of "management," and are viewed by baristas as more experienced employees who essentially perform the same job as baristas. In contrast, store managers are full-time salaried employees who have the authority to recruit, hire, promote, transfer, schedule, discipline, and terminate baristas and shift supervisors.

The evidence at trial showed that each Starbucks customer is served by a customer service "team," rather than by an individual employee. The team consists of one or more baristas and one or more shift supervisors, who each rotate jobs throughout the day. These jobs include operating the cash register, making coffee drinks, serving pastries, clearing tables, cleaning bathrooms, washing dishes, and stocking product. Shift supervisors spend more than 90% of their time performing the same service tasks as do the baristas. Store managers and assistant store managers may assist in these duties, but they generally spend only a "very small amount of time" doing so.

Starbucks mandated that the only employees eligible to share in the weekly collective tips are "all baristas and shift supervisors who worked that week." Store managers and assistant managers are prohibited from receiving any portion of these tips.

Under Starbucks' policy, the tip boxes are used only for customers who want to pay a collective tip for the entire service team. If a customer wishes to give an individual tip to a barista or a shift supervisor, the employee is entitled to keep that tip, and is not required to place the tip in the collective tip box.

The Court concluded that even if shift supervisors could legally be considered "agents," Starbucks did not violate Section 351 by permitting shift supervisors to share in the tip proceeds that were left in a collective tip box for baristas and shift supervisors. The Court reasoned that because Section 351 does not prohibit a shift supervisor from keeping gratuities given to him or her for his or her customer services, there is no logical basis for concluding that Section 351 prohibits an employer from allowing the shift supervisor to retain his or her portion of a collective tip that was intended for the entire team of service employees, including the shift supervisor. In this situation, the shift supervisor keeps only his or her earned portion of the gratuity and does not "take" any portion of the tip intended for services by the barista or baristas.

While this decision provides some clarity regarding California's tip-allocation rules, employers should not read too much into this decision. If Starbucks had had a policy permitting its store managers to share proceeds from a collective tip box, the result presumably would have been different. This decision was based on the undisputed facts showing that the vast majority of the time shift supervisors and baristas performed the same jobs; these employees rotate jobs and work as a "team" throughout the day; customers intend that their tips placed in the collective tip boxes collectively reward all of these service employees; and Starbucks manner of dividing the collective tips among the service employees (based on the time worked by each employee) is fair and equitable. The Court's legal reasoning and conclusions would not be controlling in a different factual situation.