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08 | 13 | 2010 Posted By

A Victory For Employers In California Tip Pooling Case

In *Louie Hung Kwei Lu v. Hawaiian Gardens Casino, Inc., et al.*, S171442, the California Supreme Court concluded that California Labor Code Section 351 does not provide a private cause of action for employees to recover any misappropriated tips from employers.

Plaintiff Louie Lu ("Plaintiff") was employed as a card dealer at Defendant Hawaiian Gardens Casino, Inc. (the "Casino"). The Casino had a written tip pooling policy that required dealers to set aside 15-20% of the tips received each shift, which were deposited into a "tip pool bank account" and later distributed to designated customer service employees. The tip pool policy expressly prohibited employers, managers, and supervisors from participating in the tip pool.

Plaintiff brought a class action against the Casino and its general manager alleging, among other things, that the Casino's tip pooling policy violated the employee protections under Labor 351 (prohibiting employer from taking, collecting or receiving employees' gratuities).

The Supreme Court's ruling that Labor Code Section 351 does not provide a private right of action is a victory for employers, but will not bar all future tip pooling lawsuits. As noted in the Supreme Court's opinion, the "holding that section 351 does not provide a private cause of action does not necessarily foreclose the availability of other remedies. To the extent that an employee may be entitled to certain misappropriated gratuities, we see no apparent reason why other remedies, such as a common law action for conversion, may not be available under appropriate circumstances." While the number of theories plaintiffs can assert has been reduced, the door is still open for tip pooling suits in certain situations. Determining the legality of an employer's tip pooling policy still requires a case-by-case analysis. Prudent employers will carefully review their policies to ensure that they comply with the law.