

Everyone Into The Pool: Court Expands Who Gets Tips

Supreme Court Review Expected for Appellate Ruling

A recent California appellate court opinion has substantially expanded the group of restaurant personnel who may participate in a mandatory tip pooling arrangement. Tip pooling is a common practice in restaurants throughout the state. Under a typical tip pooling arrangement, some portion of the food servers' tips are shared with other restaurant employees who directly assist in serving the customer. Often this would include bus persons and food runners. Under longstanding industry practice, personnel who do not directly assist in serving the customer are typically left out of such an arrangement.

In the case of *Etheridge v. Reins International California, Inc.* the court was asked to review whether it was permissible for a restaurant tip pooling arrangement to include others in the chain of service even though they had no direct contact with the patron. Included in this group was kitchen staff, dishwashers, and bartenders. The employer wanted these people included because their efforts also contribute to the guest's experience. Happily for the restaurant, the court approved this arrangement.

The Plaintiff was a food server at Gyu-Kak restaurant. Like so many other restaurants, this one had a mandatory tip pooling policy requiring servers to "tip out" certain



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RICHARD
ROSENBERG

categories of employees who do not provide table service, including kitchen staff, dishwashers, and bartenders. The server contended that this policy violated state law governing such arrangements. The tip statute declares that a tip is the "sole property of the employee or employees to whom it was paid, given or left for" and prohibits any employer or agent of the employer from taking any portion of a gratuity which a patron has left for an employee. The server contended that the restaurant's tip pooling policy was illegal. The employee asserted that the employer was essentially "taking" a portion of his tips in derogation of state law and giving those tips to a group of employees for whom the patron had not left a tip.

The court ruling is a major victory for restaurants and other hospitality industry employers. The court approved a tip pooling arrangement allowing anyone in the chain of service to participate in the tip pool. The court observed that patrons who

leave a tip are intending to reward the overall experience, and not just the one or two persons with whom the guest had direct contact. According to the court, by allowing dishwashers and other kitchen staff to be part of the tip pool, the restaurant is encouraging all of its employees to give their best possible service. A mandatory tip pool like this one ensures that these employees receive their fair share when patrons are pleased with the restaurant's services, but have no way to tip them directly.

We probably haven't seen the last of this issue. Though the restaurant won the argument on the tip pool, two of the three justices who approved the policy in question commented that the case is one that should be reviewed by the California Supreme Court or the state legislature. We expect that the parties will ask the California Supreme Court to review this decision.

Richard S. Rosenberg is a founding partner of Ballard Rosenberg Golper & Savitt LLP, a management side labor law firm in Universal City. Rosenberg was recently selected as one of the 25 best lawyers in the San Fernando Valley. He may be reached at (818) 508-3700 or rrosenberg@brgslaw.com.