



Tippling: Keeping your Restaurant in Compliance

Current as of March 2023

Who can be included in a tip pool?

As more restaurants consider alternate-pay models, it is essential to understand who can and cannot be included in a tip pool. Something important to consider is the definition of “**regularly tipped employee**,” which is an employee that customarily and regularly has face-to-face interaction with patrons and receives \$30 or more per month in tips.

If you are considering a pay model where your **regularly tipped employees are required to pool their tips or participate in a mandatory tip-out**, you may continue to employ a tip credit towards these employees’ hourly wages.

Managers, supervisors, and owners may *never* receive money from a tip pool or tip-out.

If you are considering a **mandatory tip pool that includes your non-regularly tipped employees** (think back-of-house workers), the rules are slightly different: For non-regularly tipped employees to participate in a tip pool or tip-out with regularly tipped employees, you must pay the *entire* staff participating in the tip pool/tip-out the full hourly minimum wage or more. When you include non-regularly tipped employees in a tip pool/tip-out of any kind you are no longer able to take a tip credit towards the hourly wages of those participating in the pool.

NOTE: Regardless of which employees participate in your tip pool, **you need to notify guests if you are utilizing a tip pool**. In 2019, the Colorado Legislature passed House Bill 19-1254, which changed the posting requirements for tip pools in restaurants. If your restaurant or bar has a tip pool or tip share, even if only regularly tipped employees are involved, you need to notify guests in writing on the menu, on table tents, or on receipts that “gratuities are shared by employees.”

You will also need to devise a plan for how the tip pool/tip-out operates and put that in writing for all employees to review and sign. This is commonly referred to as a “tip share agreement.”

Todd Fredrickson, a labor attorney and our Legal Resource Center partner at Fisher Phillips LLP, can give limited advice and discounted member rates if you need help formulating the correct language.

If you have any questions about who can be included in a tip pool or tip-out, please call the Government Affairs team at the Colorado Restaurant Association at 303-830-2972.

