



Tippling: Keeping your Restaurant Compliant

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What is a tip pool?

A tip pool is any arrangement in which an employer requires employees to share or allocate tips or gratuities amongst other employees in the business. This can include arrangements in which tips are shared amongst all eligible employees, tipped employees only, or even more specific arrangements such as requiring a server to tip out a bartender.

What tip-pool disclosures do I have to make to customers and employees?

You are legally required to notify customers if you are utilizing a tip pool of any kind. 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 must notify your customers of the tip pool in writing, be that on the menu, on table tents, or on receipts, indicating that “gratuities are shared by employees.”**

In addition, **you need to devise a written plan, or tip-share agreement, for how your tip pool operates,** including which employees are required to pay into the pool and how the money is distributed. Share the plan with your employees so they can review and sign it.

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

Which employees can be included in a tip pool?

First and foremost, it is important to note that **under no circumstances can an owner, manager, or supervisor ever be included in a tip pool** (even if they are acting in a non-supervisory capacity, i.e. working an occasional shift as a bartender or server).

Please note this does not mean that owners, managers, and supervisors are prohibited from keeping tips they receive directly through the course of their duties. For example, a supervisor who also sometimes works as a bartender is allowed to keep tips given to them directly by patrons they serve. That supervisor cannot, however, participate in a tip-pool arrangement that requires servers to tip out bartenders.

Beyond that very important issue, who can be included in a tip pool depends on whether you claim the tip credit.





Tip pools that include non-regularly tipped employees

If you are considering a **tip pool that includes non-regularly tipped employees** (ie, back-of-house workers), the rules are slightly different.

Non-regularly tipped employees are allowed to participate in a tip pool with regularly tipped employees, but only if you pay every staff member that's participating in the tip pool the full hourly minimum wage for your locality, or more. Including any non-regularly tipped employees in your tip pool eliminates your ability to take a tip credit towards the hourly wages of any employee participating in the tip pool.

Note: The tip credit in Colorado is \$3.02/hour, which means that the tipped wage is \$3.02 less per hour than the full hourly minimum wage in your jurisdiction.

Tip pools that include only regularly tipped employees

If you are considering a **tip pool that includes only regularly tipped employees**, such as servers and bartenders, then **you may claim the tip credit** towards the hourly wages of any employee participating in the tip pool.

Definition of a tipped employee in Colorado

A tipped employee is defined by the Colorado Department of Labor and Employment's COMPS order #39 as the following:

“...employees who perform significant customer-service functions in contact with patrons — which includes employees with duties typical of the following occupations, whether or not customers tip them directly: servers; bussers (i.e., server helpers); counter personnel who serve customers; sushi or teppanyaki chefs who are similar to counter personnel because they have direct contact and interact with customers, and prepare and serve meals to customers (in bar areas or at tables); service bartenders; bartender assistants or barbacks, who are similar to bussers because they learn bartending under the tutelage of a bartender they support and from whom they receive their tips while working in the bar area and interacting with customers; sommeliers who explain the wine list to, bring the selected wine bottle to, and serve wine to customers; and bellhops.”

Can I deduct the cost of credit-card processing fees from my employees' tips?

Yes, you can. However, deducting the cost of credit-card processing fees from tipped employees' tips eliminates your ability to claim the tip credit toward the hourly wages of any employee in your tip pool.

Still have questions?

If you have any questions or want to speak with Todd Fredrickson at Fisher Phillips LLP, please call the Government Affairs team at the Colorado Restaurant Association at 303-830-2972, or email Colin Larson at clarson@corerestaurant.org or Rebekah Hernandez at rhernandez@corerestaurant.org.

