



Labor and Employment Law Seminar

**2026
LAS VEGAS**

WAGE, LABOR, AND WORKFORCE OPERATIONS: TIPS, SERVICE CHARGES, TIP POOLS, AND HOSPITALITY PAY



Presented by

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HOW TO AVOID DROWNING IN THE RULES ON TIPS, SERVICE CHARGES, HOSPITALITY PAY AND TIP POOLS

Agenda

- What Is A Tip?
- What Is A Service Charge And How It Is Different From A Tip?
- What Is A Tip Pool And Is Yours In Compliance?
- Hospitality Pay Compliance Toolkit



**What is the current minimum wage
for a tipped employee in Nevada?**

Current Minimum Wage For A Tipped Employee In Nevada

■ \$12.00 per hour

Current Minimum Wage For A Non-Tipped Employee In Nevada

■ \$12.00 per hour

JOE LOMBARDO
Governor

STATE OF NEVADA



DR. KRISTOPHER SANCHEZ
Director

BRETT K. HARRIS, ESQ.
Labor Commissioner

DEPARTMENT OF BUSINESS AND INDUSTRY OFFICE OF THE LABOR COMMISSIONER

STATE OF NEVADA MINIMUM WAGE 2026 ANNUAL BULLETIN POSTED JUNE 29, 2026

NEVADA BALLOT QUESTION 2, PASSED NOVEMBER 2022, ELIMINATED TWO-TIER MINIMUM WAGE AS OF JULY 1, 2024.

Effective Date	Minimum Wage
July 1, 2026	\$12.00

PURSUANT TO ARTICLE 15, SECTION 16(A) OF THE CONSTITUTION OF THE STATE OF NEVADA AND ASSEMBLY BILL (AB) 456 PASSED IN 2019 DURING THE 80TH REGULAR SESSION OF THE NEVADA LEGISLATURE, THE ABOVE MINIMUM WAGE RATE SHALL APPLY TO ALL EMPLOYEES IN THE STATE OF NEVADA UNLESS OTHERWISE EXEMPTED. THIS RATE IS EFFECTIVE AS OF JULY 1, 2025, AND APPLIES TO ALL EMPLOYEES REGARDLESS OF OFFERED EMPLOYER HEALTH BENEFITS.

Copies of this notice may be obtained from our website at: www.labor.nv.gov or by contacting the addresses and phone numbers listed above.

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No Tip Credit In Nevada

- Under the FLSA, employers are allowed to pay certain employees a direct cash wage below the federal minimum wage.
 - The minimum direct wage for these employees is \$2.13/hr.
 - Employers may take a “tip credit” of up to \$5.12/hr to make up the difference equal to \$7.25/hr (the federal minimum wage)
- In Nevada, tips are wages and improperly withholding even a penny can result in huge liability for the Company
 - Nevada prohibits applying tips "as a credit toward the payment of the statutory minimum hourly wage."
 - The Nevada Constitution independently provides that tips "shall not be credited as being any part of or offset against" the required wage.
- **Bottom line:** every tipped employee must receive the **full Nevada minimum wage in cash**, *and then* keeps tips on top.

Why This Matters?

- Tipped industries dominate Nevada's economy — gaming, resorts, restaurants, and bars employ a large share of the state workforce.
- The federal government and state agencies across the country have stepped-up vigorous enforcement the rules. The applicable rules can vary significantly across state lines.
- Plaintiffs' attorneys are filing high-stakes lawsuits against restaurants, hotels, and other hospitality businesses on a daily basis.
- Tip and wage rules are **strict-liability-flavored**: good intentions and industry custom are not defenses.
 - Federal exposure is severe. An employer that unlawfully keeps tips owes affected employees **the tips kept plus an equal amount in liquidated damages**, plus attorney's fees and costs.
 - Federal civil penalties reach **up to \$1,100 per violation** for unlawfully keeping tips.
- Nevada layers its own enforcement on top: violations of the wage chapter are a **misdemeanor** and carry administrative penalties.



What Is At Risk?

- Time, money and fees associated with an ongoing investigation by the Department of Labor;
- Potential assessment of Civil Money Penalties;
- Liquidated Damages and Back Wages for up to three years;
- Possible individual management liability;
- Diversion, distraction, disruption;
- Adverse publicity;
- Criminal liability.

What is a Tip?

What is a Tip?

A tip (or gratuity) is a voluntary amount left by a guest.

- Voluntary – given at the guest’s discretion
- Customer determines amount
- Not subject to negotiation
- Given after service is complete
- Must be monetary
 - Credit-card and charged tips = Tips
 - Non-cash “gifts” (e.g. tickets, jewelry, merchandise, etc.) = Not Tips



Tips Are Not Wages

- Company cannot use tips as an excuse to reduce regular wages. Tipped employees must receive minimum wage regardless of tips.
- Tips are not considered when calculating overtime.
- Tips are not considered when calculating employer-side tax obligations.
 - But employees are required to self-report tips as taxable income.
- However, will be considered unpaid wages due and owing to the employee if employer fails to pay the proper amount of tips

Only Employees May Receive Tips

- It is **unlawful for any employer to take all or part of any tips or gratuities** bestowed on its employees
 - Employers and their agents are prohibited from sharing in or keeping any portion of a gratuity left for or given to one or more employees by a patron
- The FLSA flatly prohibits an employer from **keeping tips for any purpose**, including letting **managers or supervisors** share in or keep any portion — **regardless of whether a tip credit is taken**.
 - Regulations confirm an employer may exert control over tips **only** to distribute them to the employee who earned them; or administer a lawful tip pool.
 - Company cannot take a percentage from charged tips for breakage, walkouts or register shortages.
- Agent = every person other than the employer having the authority to hire or discharge any employee or supervise, direct, or control the acts of employees
- Exception: a manager can keep a tip if it is given to the manager for services rendered by the manager
- Law in Nevada is unsettled on whether employer can deduct credit card processing fees from tips; but conservative guidance would suggest that this should be avoided.

Who Is A Manager Or Supervisor?

- FLSA's Executive Exemption Duties Test:
 - Primary duty is management of the enterprise or a customarily recognized department or subdivision
 - Customarily and regularly directs work of 2+ full-time employees or equivalents
 - Authority to hire/fire or whose suggestions and recommendations are given particular weight
 - Note: the “salary basis” requirement does not apply
- “Management” includes tasks such as:
 - Interviewing, selecting, and training of employees
 - Setting and adjusting their rates of pay and hours of work
 - Directing the work of employees; disciplining employees; planning the work
 - Apportioning the work among the employees

Compliance Checklist

- ✓ Pay full Nevada minimum wage in cash; **never** treat tips as part of wages.
- ✓ Remit **100% of charged/credit-card tips** to the employees who earned them, promptly.
- ✓ Keep **managers and supervisors out** of employee tips
- ✓ Document your tip-handling policy in writing and train shift leaders on it.
 - Strict discipline for any manager/supervisor suggesting that employee should tip out to the manager
- ✓ Default to **not** deducting credit-card processing fees from tips absent Nevada-specific advice.
- ✓ Audit POS tip-out reports periodically for leakage to the house.
- ✓ Promptly investigate any complaints of improper amount of tips being paid out.

What is a Service Charge? How is that different from a Tip?

Service Charges in Nevada

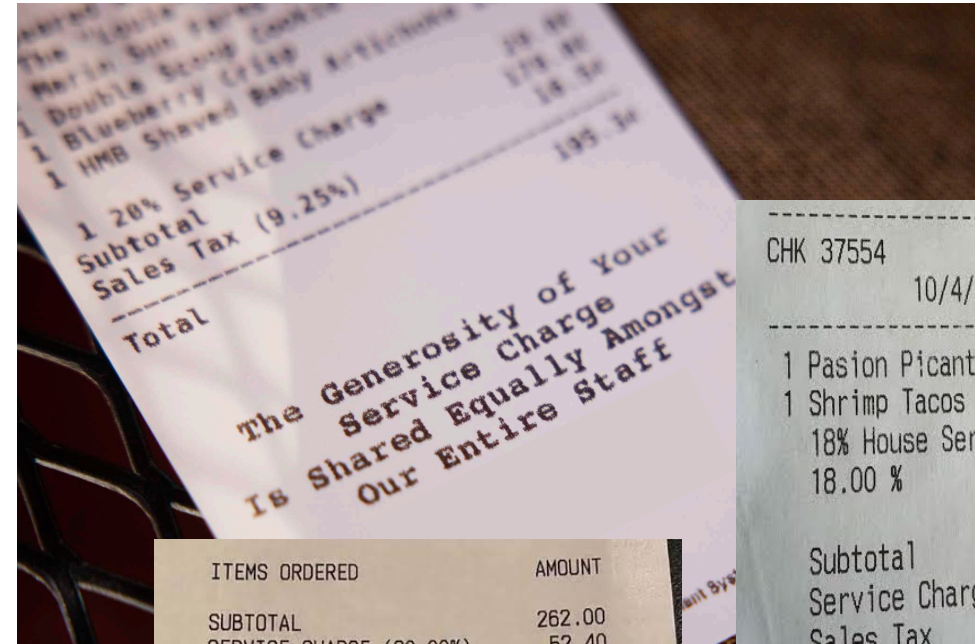
- A contractually fixed or policy-driven "auto-gratuity" (large-party charge, banquet/catering charge, bottle or cork fee, delivery fee) is a **service charge**, not a tip.
- Property of the employer (wages), subject to payroll tax & included in overtime calculations

Factor	Tip	Service charge
Free from compulsion?	Payment is voluntary	Mandatory/compelled
Customer sets the amount?	Unrestricted customer choice	Fixed by the business
Dictated by employer policy?	No	Yes — set by policy/contract
Customer picks the recipient?	Generally yes	No

Service Charges & Gratuities – The Label Doesn't Control

Service charges are mandatory fees set by the business.

- Federal wage law: a **compulsory charge for service** — e.g., 15% of the bill — **is not a tip**, even if the employer distributes it to employees.
 - Under 29 CFR 531.55 this expressly reaches **hotel banquet charges** negotiated between the hotel and customer for distribution to staff.
- Tax law agrees: the **employer's (or employee's) characterization as a "tip"** is not determinative; distributed service charges must be treated as wages.
 - Example: Menu says 'automatic gratuity' → Company assumes that tip rules apply. They don't
 - Law = Service Charge



ITEMS ORDERED	AMOUNT
SUBTOTAL	262.00
SERVICE CHARGE (20.00%)	52.40
TAX	20.28
TOTAL DUE	334.68

Suggested Gratuity	
18% Gratuity:	47.16
20% Gratuity:	52.40
22% Gratuity:	57.64

GRATUITY	1.00
TOTAL	335.68

Service charge does not go to staff ♡

CHK 37554	TBL 62/5
10/4/2024 1:05 PM	

1 Pasion Picante	16.00
1 Shrimp Tacos	18.00
18% House Service Charge	6.12
18.00 %	
Subtotal	\$34.00
Service Charge	\$6.12
Sales Tax	\$1.26
Alcohol Tax	\$1.12
Total Due	\$42.50

GRATUITY NOT INCLUDED	
For your convenience we are providing the following gratuity calculations:	

Service Charge Consequences #1 — It's the Employer's Money (as Wages)

- Service charges **become part of the employer's gross receipts** — they are not employee tips.
 - The employer is **not legally required by the tip-ownership rules to hand them to staff** — service charges are the employer's property in the first instance.
- If the employer **does** distribute them, the amounts are treated as the employer's **wages** paid to the employee — and may be used to satisfy minimum-wage and overtime obligations.





Service Charge Consequences #2 — Overtime & Tax Fallout

- **Overtime regular rate.** Because distributed service charges are **wages**, they must be folded into the employee's **regular rate** for overtime — unlike tips, which are not.

$$\text{E.g. } \frac{(\text{hourly wages} + \text{service charge})}{\text{total hrs worked during week}} = \text{Regular Rate}$$

$$\text{Overtime Pay} = \text{Reg. Rate} * 1.5 * \# \text{ of OT hrs}$$

- **Payroll tax.** Distributed service charges are **non-tip wages** subject to withholding, not tips.
- **Lost federal tip credit.** Service charges are **excluded** from the IRC §45B FICA tip credit and cannot be reported as tips.

Nevada-Specific Angles On Service Charges

- Nevada's tip statute protects **"tips or gratuities"** — its ownership and no-credit rules turn on whether a charge is a **true tip**.
 - But Nevada courts treat **patron-directed mandatory gratuities** as belonging to the **service staff**, not the house, where the patron pays them for service received.
 - [Nevada Gaming Comm'n v. Desert Palace, Inc., 101 Nev. 173, 697 P.2d 477 \(1985\)](#)
 - **Practical tension:** a charge that is truly the customer's gratuity for the server may be protected like a tip under Nevada law even if structured as "mandatory." Structure and messaging matter.
 - **Disclosure gap:** there is **no Nevada statute or regulation we identified that mandates a specific customer-disclosure format** for service charges — but transparency is still a contract, consumer-protection, and litigation-risk best practice.
-  Calling it 'mandatory' does not automatically make it the employer's money in Nevada if the patron pays it as a gratuity for the server.

Compliance Checklist (Service Charges)

- ✓ **Decide and document** whether each charge is a tip or a service charge — apply the four-factor test.
- ✓ **Disclose clearly** on menus, banquet contracts, and checks what the charge is and where it goes.
- ✓ Run **distributed service charges through payroll as wages** (withholding), not as tips.
- ✓ **Include distributed service charges in the regular rate** when computing overtime.
- ✓ In Nevada, treat **patron-directed mandatory gratuities** cautiously — they may belong to staff.
- ✓ Avoid implying a service charge is a "tip" to the customer or on tax forms.



TIP POOLING IN NEVADA

What Is Tip Pooling?

Collecting all or part of the tips received by employees into a pool and then redistributing among tipped employees



FLSA Tip Pooling Rules

- If employer takes the tip credit, only front of house may participate
- If employer does not take the tip credit, the pool can be mixed
- In voluntary tip pools, employees may decide on their own to share tips with non-tipped employees
- Mandatory tip pool tips must generally be fully distributed within the payroll period
- Supervisors and managers cannot receive tips from the tip pool
- If employer does not take a tip credit but uses a mandatory tip pool, it must maintain and preserve payroll/other records on each tipped employee and weekly/monthly amount of tips reported by each employee

Who Is a "Manager or Supervisor"? The Duties Test

- "Manager" or "supervisor" means any employee whose duties match the **executive-employee duties test** of 29 C.F.R. § 541.100(a)(2)–(4) or § 541.101. ([29 C.F.R. § 531.52](#))
- In practice, that generally means someone who:
 - has a **primary duty of management** of the enterprise or a department;
 - **customarily directs the work of two or more** full-time employees; and
 - has authority to **hire/fire** (or whose recommendations carry particular weight).
- **Title is not the test — duties are.** A "shift lead" who truly manages may be barred; a "manager" who only serves tables may be eligible.

Tip Pooling Nevada

- **Voluntary pool:** employees agree among themselves to divide tips. Nevada expressly permits this.
- **Mandatory (employer-imposed) pool:** the employer requires tip sharing as a condition of employment. Nevada permits this **so long as the employer keeps none of the tips.**
 - Alford v. Harolds Club, 99 Nev. 670, 669 P.2d 721, * 734 (1983)
 - The Nevada Supreme Court upheld a mandatory, employer-imposed pool because the employer **distributed all tips to employees and kept none** for itself.
- There is **no "direct-benefit" test** — the controlling question is simply whether the employer **took or kept** the tips.
 - FLSA rules regarding tip pooling are not applicable because tip credits are not allowed
- Tip pooling policy must be “fair and reasonable”
- Tip pools can include employees in the “chain of service”
 - Ask yourself, “did this employee contribute to the patrons’ positive experience?”
 - This is going to vary by business (Ex: casinos v. formal dining)

Tip Pooling Guidelines

Included (Chain of Service)

- Servers & Waitstaff
- Bartenders & Bar-backs
- Bussers & Food Runners
- Kitchen staff & Dishwashers

Excluded

- Managers & Supervisors
- Owners & Agents
- Employees with hiring/firing authority
- Anyone outside the chain of service



The Hard Limit — Managers & Supervisors Are OUT

- An employer may not keep tips for any purpose, including allowing managers or supervisors to keep any portion of employees' tips or receiving any amount from the tip pool— regardless of whether a tip credit is taken.
- Nevada courts recognize §203(m)(2)(B) expressly prohibits pooling with managers or supervisors.
 - [Norsoph v. Riverside Resort & Casino, Inc., 611 F. Supp. 3d 1058 \(D. Nev. 2020\)](#)
- **Narrow carve-out:** a manager/supervisor may keep tips received directly from a customer for service he or she directly and solely provides.
 - Based on the assumption that manager/supervisor is not spending the entire shift making drinks or waiting tables

Tip Pooling Arrangements

- We strongly recommend a written tip pooling policy and employee acknowledgment
- Detail what classifications participate
- Whether it is mandatory
- The formula for who employees are paid out
- Get a signature
- Avoid possible landmines
 - Assistant Managers, Shift Leads, employees working in dual roles, etc. – exclude anyone who is arguably a manager in a tip pool or tip sharing arrangement
 - Assessment is on a case-by-case basis

Pooling, Sharing & Service Charges

Mechanism	Voluntary/ Mandatory	Who owns it?	Distribution Rules
Tip Pooling	Voluntary	Employees	Fair allocation among chain of service
Tip Sharing	Voluntary	Recipients (e.g., busser)	Server elects to share with helpers
Service Charge	Mandatory	Employer	Paid as wages; may allocate but taxed

When to Pay Out?

- Under 29 C.F.R. § 531.54 (b)(2)
 - Full and prompt distribution of tips. An employer that facilitates tip pooling by collecting and redistributing employees' tips does not violate section 3(m)(2)(B)'s prohibition against keeping tips if it fully distributes any tips the employer collects no later than the regular payday for the workweek in which the tips were collected, or when the pay period covers more than a single workweek, the regular payday for the period in which the workweek ends. To the extent that it is not possible for an employer to ascertain the amount of tips that have been received or how tips should be distributed prior to processing payroll, tips must be distributed to employees as soon as practicable after the regular payday.

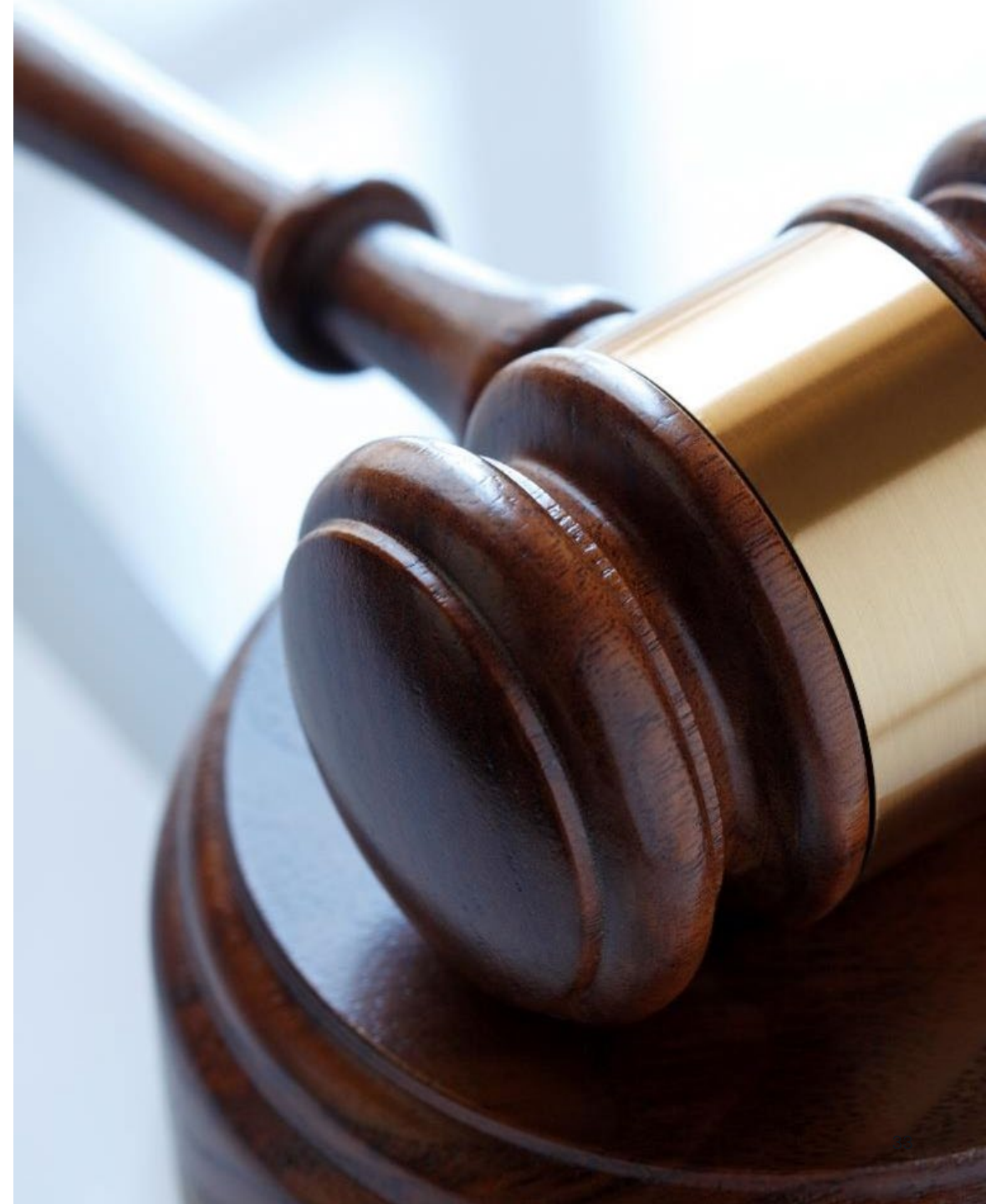


How to Set Up a Lawful Tip Pool – 4 Steps

- **Step 1:** Determine if the tip pool will be voluntary
- **Step 2:** Pick participants? Mixed or only FOH? Remember the chain of service.
- **Step 3:** Consider the method of distribution – prorate based on hours or percentages.
- **Step 4:** Develop a tip pooling policy/agreement.

Penalties For Unlawful Tip Retention

- **Make-whole + double damages.** An employer that violates the tip-keeping bar owes affected employees the tips unlawfully kept (plus any tip credit taken) and an equal amount as liquidated damages.
- **Attorney's fees and costs** are awarded to prevailing employees.
- **Civil penalty up to \$1,100 per violation.**
- **Nevada:** misdemeanor plus Labor Commissioner administrative penalties.
 - [Baldonado v. Wynn Las Vegas, LLC, 124 Nev. 951, 194 P.3d 96 \(2008\)](#)



Compliance Checklist

- ✓ Put the pool policy **in writing**; state who contributes, the formula, and the payout schedule.
- ✓ **Exclude all managers and supervisors** (duties test), except their own direct-service tips.
- ✓ Confirm the **employer keeps \$0** of the pool.
- ✓ If you pool **BOH**, confirm you take **no tip credit** (you don't, in Nevada) and document it.
- ✓ **Fully distribute** pooled tips **by the regular payday**.
- ✓ Re-run the **duties test** whenever a "lead" role changes.



Hospitality Pay: Pitfalls and Compliance

Service Charges & Payroll

- Service charges are treated as wages.
 - Must be reported on employees' paychecks.
- Included in taxable gross receipts and subject to payroll tax (optional tips/gratuities are exempt from sales tax).
- Count toward overtime and meal/rest premium calculations.
- Employers may allocate but retain ownership.
- Likely not subject to the federal “no tax on tips.”
- Ensure records align with IRS classification to protect tax status



Recordkeeping & Reporting



Maintain detailed records

- Daily tip amounts by employee and payment type (cash, card)
- Service charge totals and allocations as wages
- Documentation supporting voluntary nature of gratuities
- Separate accounts for tips and service charges in accounting software
- Retention of distribution logs for audits

No Tax on Tips – Overview

Federal deductions for tip income



- Allows deduction of up to \$25,000 of voluntary tip income from federal taxable income (2025–2028)
- Separate deduction of up to \$12,500 for overtime pay
- Phases out for earnings above \$150k (single) / \$300k (joint)
- Applies only to voluntary tips – not to service charges
- Does not waive payroll or state taxes; IRS guidance forthcoming

Daily Overtime — Nevada's Trap For The Unwary

- Nevada has **daily** overtime, not just weekly:
 - An employer must pay **1.5× the regular rate** to an employee earning **less than 1.5× the minimum wage** who works:
 - more than **40 hours in a week**, or
 - more than **8 hours in a workday** (unless a mutually agreed 4-day/10-hour schedule applies).
- An employee earning **at or above 1.5× minimum wage** gets overtime only after **40 hours/week**.
 - **The threshold today:** $1.5 \times \$12 = \$18.00/\text{hour}$. Below \$18/hr → daily overtime applies. At/above \$18/hr → weekly only.

Regular Rate — Don't Underpay Overtime

- Overtime is **1.5× the regular rate**, and Nevada expressly incorporates the **federal regular-rate regulations** for the computation.
 - **Tips are excluded** from the regular rate.
 - **Distributed service charges are wages and must be included** in the regular rate — a frequent miss.
 - Nondiscretionary bonuses and commissions generally must be included too.

Best Practices: Policies & Training



Policy & Training Recommendations

- Audit your tip policies and distribution percentages annually
- Clearly define who participates in tip pools and why
- Exclude managers and supervisors from tip pools
- Update employee handbooks to reflect current law
- Provide mandatory training for managers on tip handling



Best Practices: Operations & Communication

Operations

- Label service charges clearly on menus and receipts
- Separate tip and service charge lines in POS systems
- Pay out tips promptly and separately from wages
- Use distinct payroll codes for tips vs. service charges

Communications

- Explain tipping and service charge policies to staff
- Display policies on websites and at point of sale
- Be transparent with guests about where charges go
- Invite questions and feedback from employees

Best Practices: Recordkeeping & Audits

- Log tip pool distributions by day and role
- Retain service charge allocation records for at least four years
- Reconcile POS reports with payroll records each pay period
- Conduct quarterly internal audits of tip pooling practices
- Respond promptly to any employee inquiries or disputes



Implementation Roadmap

- Audit current tip & service charge practices
- Define policies and document distribution formula
- Train managers and staff
- Update POS & payroll systems to segregate payments
- Establish recordkeeping & audit schedule
- Communicate changes to employees and guests



Compliance Checklist

- ✓ Pay **\$12/hr** cash minimum; verify payroll isn't on the retired two-tier setting.
- ✓ Track **hours per day**, not just per week. Never hurts to have every employee recording time, just in case you need the backup data later.
- ✓ Apply **daily overtime** for anyone earning **under \$18/hr**.
- ✓ Fold **distributed service charges** into the regular rate.
- ✓ Obtain **specific, written** deduction authorizations; never blanket.
- ✓ Obtain **specific, written** agreement to work 4/10's, or to skip or combine any break time.
- ✓ Monitor employees (and conduct regular audits) to ensure no shift jamming or off-the-clock work. Write them up, but make sure they still get paid.
- ✓ Retain wage records **2 years**; produce within **10 days** of request.



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Questions?



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Thank you.