



Will Tips Apps Lure Workers Back to Work? What Hospitality Employers Need to Know

Insights

7.06.21

The world is opening up again and Americans are venturing out to travel, shop, and dine out. With the sudden rise in leisure and hospitality sales, the industry is facing an increased need for skilled employees – but hospitality employers continue to suffer a brutal shortage of workers despite the growing number of available jobs. The mismatch between employers and jobseekers has resulted in a slowdown in hiring and increased pressure on hospitality businesses. *What are hospitality employers to do?* Pay is always a key variable, but after months of restrictions and capacity limitations, many hospitality businesses are not in the position to increase labor costs while trying to rebound from the pandemic.

Maybe the customer can help? Increasing accessibility to tipping could make it easier for patrons to subsidize labor costs and attract workers back to the workplace. Recently, several companies have developed software applications that make it easier for customers tip hospitality workers. It seems simple: scan a QR code, leave a tip, and be on your way. Although this type of app appears to be a possible solution to help attract workers to back to work, there are a few issues that you should consider before implementing tip apps in your workplace.

Tips and Tricks for Employers Interested in Tip Apps

The Wage and Hour Division of the Department of Labor recently enacted the 2020 Tip Rule under the Fair Labor Standards Act (FLSA), which sought to revise certain regulations relating to tipped workers. To ensure that you are complying with the FLSA and your state's wage and hour laws, below are a few issues that should be considered before implementing a tip app at your business:

1. **Tipped Employees.** Special minimum wage rules apply to “tipped” employees, or employees that engage in occupations where they regularly receive more than \$30 per month in tips under the FLSA. By attracting customers to leave tips for hospitality workers, tipping apps allow the customer to control who may receive tips. This may allow housekeeping staff, cooks, dishwashers, and other employees that are not traditionally considered tipped employees to begin collecting tips. Although these types of employees may receive enough tips to be classified as tipped employees, we recommend waiting to see how many tips these types of employees receive to ensure that they qualify as tipped employees before changing the classification of those employees.

2. **Distributing Tips.** Employers are not allowed to keep any portion of an employee's tips and must disburse the tips to employees. Providing tips to from an app may present significant hurdles if the app software does not provide a record of the tips each employee receives through the app. Additionally, once the tips are received on the app from customers, employers will likely need to deposit the tips into a business account. Because tips can't be kept from employees, it may be a good idea to open a separate bank account specifically for employees' tips. Once the tips are deposited, you will then need to distribute the tips to employees. Given the additional steps involved with distributing tips to employees, you should implement a system to count the tips received both through the app and by traditional means (either on credit cards scanned at the establishment or cash provided in-person) to ensure you are complying with the FLSA.
3. **Tip Credit.** Employers that satisfy certain conditions (and operate in certain states) may count tips from tipped employees as a credit towards the minimum wage obligation (or "tip credit"). Utilizing a tip app may make it easier for customers to leave tips and allow for tipped employees to receive higher tips than usual – which will make it more likely that certain employers can take advantage of the tip credit. You should maintain records of both the in-person transactions and tips received through the tip app for both payroll and tip credit purposes.
4. **Tip Pooling.** Employers that pool tips among employees and regularly receive such tips (or "tip pooling") may only collect a tip credit for employees that participate in a tip pool and if the pool includes workers who customarily and regularly receive tips, such as front-of-the-house employees. Before electing to implement mandatory tip pooling, you should be aware that tip pools must be voluntary agreed to by employees in a number of states, including Kentucky, Minnesota, Montana, New Hampshire, and Wyoming. If you elect to maintain a tip pool with front-of-house and back-of-house employees, all participating workers must be paid the minimum wage. Owners, supervisors, and managers are strictly prohibited from sharing in the tip pool regardless of which employees participate.

You may experience some initial issues integrating in-person tips that may be received and distributed in the same day, and tips received from a tip app that may take a few days to process and distribute to employees. Additionally, you may need to consider how tips are distributed based upon the new types of employees that may receive tips through tip app software. If you are considering using a tip app, it is crucial to use a method of tip pooling that will allow tips to be easily and quickly disbursed to employees.

What Should You Do Next?

Employers interested in using a tipping application for their employees should carefully evaluate how the tips are collected, how the tips are distributed to the employer and then to employees, and the recordkeeping that the app provides before utilizing the software. Having a plan for implementing the software, streamlining it with the current recordkeeping and payroll processes, and calculating wages and tips in accordance with the relevant federal and state laws will make the transition to an app-based tipping software much easier.

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