

# CAN RESTAURANT HOSTS SHARE IN THE TIP POOL? TOP 5 QUESTIONS FOR EMPLOYERS THAT TAKE A TIP CREDIT

Insights  
May 16, 2024

Many restaurants utilize tip pools to encourage teamwork, consistency, and customer-focused service – but you may be confused about who can and can't participate in the pool. You feel confident that your servers and bartenders can share their gratuities with each other, though you're not sure whether your hosts are considered "tipped employees" under the applicable federal and state laws. Why is this significant? First, employers must follow stringent rules if they take a so-called "tip credit" and pay tipped workers less than the standard minimum wage. Second, recent rules from the Department of Labor (DOL) have caused more challenges for hospitality businesses utilizing the tip-credit method of wage payments. So, what are the legal considerations for hosts? Here are the top five questions you should consider.

## What Are the Basic Tip Credit Rules?

The Fair Labor Standards Act (FLSA) permits employers to take a tip credit and pay less than the federal minimum wage to employees who traditionally receive tips, so long as employees make up the difference in tips and the employer meets certain other requirements. You should also note the parameters on time that can be spent on "side-work" while taking the tip credit. [You can read more about it here.](#)

The federal tipped minimum wage is \$2.13 an hour compared to the standard \$7.25 minimum wage. You should note, however, that many states have higher minimum wages for both tipped and non-tipped employees, and some states do not allow employers to take a tip credit at all.

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## Who Can Typically Participate in a Tip Pool?

Tip pooling is a common practice in restaurants to promote equity by collecting tips and redistributing them among employees. While restaurants generally have flexibility on allowing non-tipped employees to join the tip pool when you pay tipped employees the full minimum wage, you must follow stricter rules when you take a tip credit.

So, who is considered a “tipped” employee? The FLSA defines a “tipped employee” as “any employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips.” Over the years, the DOL has said that servers, bussers, and bartenders are among the kinds of employees who may participate in a traditional tip pool. But the DOL has also taken the position that workers such as chefs, cooks, and dishwashers generally may not be allowed to join mandatory tip-pooling arrangements if you take a tip credit.

Still, some positions — such as hosts who are customer-facing — don’t clearly fall into these categories. So, under what circumstances can you include them in your tip pool if you take a tip credit? You’ll have to look beyond the job title and may even need to turn to the customary practices in your area (more on that below).

## What Makes Hosts Unique?

Hosts generally perform various duties, including managing reservations, customer expectations, and seating charts; greeting and seating guests; keeping the lobby presentable; and coordinating with servers, bartenders, and kitchen staff.

If you take a tip credit and want hosts to share in the tip pool, you’ll have to determine whether they are “tipped employees” who “customarily and regularly receive more than \$30 a month in tips.” The answer will depend on a variety of factors, such as:

- Your restaurant’s tipping policy.
- The tipping culture in your geographic area.
- The type of restaurant. For example, tipping may be more prevalent at fine-dining or busy restaurants than casual or slower places.

## What Are the Key Legal Considerations?



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When determining whether hosts meet the definition of “tipped employee,” the DOL and the courts have looked at the extent to which the employees interacted with customers and performed duties that traditionally generated service gratuities. Some key considerations may include:

- Customer interactions.
- Table attendance duties.
- Whether undesignated tips are common in the industry or geographic location.
- Whether hosts in similar establishments in the area receive tips, either directly or from a tip pool.

Some courts have found that restaurant hosts are “tipped employees” because they sufficiently interact with customers. Indeed, based on experience with DOL audits, a good rule of thumb is that the more interaction an employee has with customers, the stronger the argument that the employee is a “tipped employee” who can participate in a tip pool. But some risk exists when you allow hosts to share in a tip pool if you take a tip credit. For one thing, rulings from federal district courts and appeals courts vary, so the answer may depend on the specific jurisdiction. For another, the DOL hasn’t issued much information in recent years specifically addressing hosts as tipped employees.

Historically, though, the DOL has said, “if it is demonstrated that hosts and hostesses in similar establishments in the area have received and are now receiving tips, either directly or from a tip pool, they may also be regarded as tipped employees who are eligible to participate in a tip pool.”

Because there is some uncertainty, however, it’s a good idea to consult with experienced legal counsel before requiring employees who are tipped directly to share gratuities with hosts.

### **What Other Options Do You Have?**

If you’re not sure whether you can confidently allow hosts to share in a traditional tip pool – with workers who earn the tipped minimum wage – you can consider a non-traditional one by paying all participants, including servers and bartenders, at least the full minimum wage.

Under the current federal rules, employers may allow or even require tip sharing with non-tipped employees in a non-traditional tip pool if certain criteria are met:

- You must pay the full minimum wage to both the tipped employees who contribute to the pool and the non-tipped employees who receive tips from the pool.
- Additionally, as with a traditional tip pool, none of your restaurant's supervisors or managers may participate in the pool.

By paying everyone who participates in the pool the full minimum wage, you can allow more employees to share in service gratuities, including back-of-the-house staff like cooks and dishwashers.

In addition, to bolster the defense that your hosts meaningfully participate in tip generating activities, you can add job duties for your hosts such as providing menus to the guests as they are seated, taking initial drink orders, etc.

Just remember that state rules also come into play and could vary significantly, so be sure to check the rules that impact your locations.

## **Conclusion**

If you have any doubt as to whether you are compliant with tip credit and tip sharing rules, reach out to your Fisher Phillips attorney, the authors of this Insight, or any attorney in Fisher Phillips' [Hospitality Industry Team](#) or [Wage and Hour Practice Group](#). Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information, as we will continue to monitor developments in this area and provide updates as appropriate.