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INFORMATION ON TIPPED AND SERVICE EMPLOYEES

On a regular basis, the Vermont Department of Labor (VDOL) receives questions or encounters situations regarding "service or tipped" employees. The following information will provide employers and employees with a better understanding of the rules and regulations regarding "service or tipped" employees.

DEFINITION OF A "SERVICE OR TIPPED" EMPLOYEE: As of July 1, 2017, a "service or tipped employee" means all those, in either hotels, motels, tourist places, or restaurants who customarily and regularly receives more than **\$120.00** per month in tips for direct and personal customer service. This means, if an employee does not regularly receive more than \$120.00 a month in tips, the employee shall be paid an hourly wage equal to or exceeding the minimum wage rate.

BASIC WAGE RATE: Effective January 1, 2018 and each subsequent January thereafter, the basic wage rate will increase the same percentage amount as the minimum wage rate, using the Consumer Price Index (CPI), not seasonally adjusted, city average, or 5%, whichever is smaller. The current basic wage rate for "service or tipped" employees is indicated on the Department's minimum wage poster.

TIP CREDIT: Service or tipped employees who regularly receive more than \$120.00 per month can be paid at a rate lower than the minimum wage, but under no circumstances can they be paid lower than the basic wage rate. Employers can take a "tip credit" towards meeting the minimum wage rate. However, if a service or tipped employee does not earn enough tips in a workweek to make up the full tip credit, the employer **is required** to make up the difference. Below is an example of where an employer has paid the minimum basic wage rate and the difference the employer would be required to make up if the tips received did not result in the hourly wage equal or exceeding the current minimum wage. **Please note the basic wage rate (\$5.25) and the minimum wage rate (\$10.50) will change January 1st of each year as indicated below*.**

	Total Wages
Employee works 20 hours at \$5.25 per hour.	\$ 105.00
Employee earns tips of \$50.00.	\$ <u>50.00</u>
Total paid thus far to employee.	\$ 155.00
Minimum wage is \$10.50 for 20 hours worked.	\$210.00
Employer would subtract out amount already paid.	(<u>155.00</u>)
Employer would be required to pay.	\$.55.00 **

**This ensures the employee has received the minimum wage amount for ALL hours worked.

***PLEASE NOTE:** As of 1/1/18 the minimum wage increased to \$10.50 and the basic tipped wage rate increased to \$5.25. Each year VDOL posts any changes in the minimum wage and basic tipped wage rate on our website at www.vermont.labor.gov.



RECORD KEEPING: A service or tipped employee shall submit a signed report to the employer on a weekly basis, indicating the total amount of tips received and retained by the employee during the previous seven-day period.

The employer shall preserve all such reports submitted by the employee for a period of three (3) years. These records include, but are not limited to, the actual days and hours worked each day and payroll records detailing when the payments were made. A complete list of records an employer shall maintain is detailed in the Minimum Wage Rules, along with the Vermont Employment Security Board Rules, both of which can be found at the VDOL website, www.labor.vermont.gov.

Pursuant to Section 3(m) of the Fair Labor Standards Act (FLSA) the employee shall retain all tips received, except to the extent that there is a valid tip pooling arrangement. Additionally, Section 3(m) **prohibits** any agreement between the employer and the employee reallocating any part of the employee's tips to the employer.

TIP POOLING: A valid tip shall meet the two requirements indicated below. If both requirements are met, it is not necessary for the tip pool to be voluntary.

1. It cannot require an employee who actually receives tips to contribute more than is customary and reasonable.
2. Tips in the tip pool may only be shared among employees that "customarily and regularly" receive tips.

The FLSA has specific guidelines around who may or may not participate in a valid tip pool. The following occupations have been determined as eligible for tip pooling: wait staff, bellhops, counter personnel who serve customers, busboys/girls, server helpers, and service bartenders. The following occupations have been determined as ineligible for tip pooling: janitors, dishwashers, chefs or cooks, managers, and laundry room attendants.

TIPS CHARGED ON CREDIT CARDS: Federal Regulations allow for the reduction of the credit card tips by the amount of the percentage charged by the credit card company when tips are charged on credit cards. However, if this is the employer's practice, it would be advisable to notify employees of such practice, either through an employee handbook or written memo.

TIME SPENT IN NON-TIPPED DUTIES: 29 C.F.R. § 531.56(e) allows employers to take the tip credit for time spent in duties related to the tipped occupation, even though the duties are not directly producing tips. For example, a waiter/waitress who spends time cleaning and setting tables, making coffee and occasionally washing dishes or glasses may be considered to be engaged in the tipped occupation even though the duties are not producing tips. However, if the tipped employee is spending a substantial amount of time (in excess of 20%) performing non-tipped duties, no tip credit may be taken.

TIPS MUST BE INCLUDED AS WAGES PAID: 21 V.S.A. §1301 (12) includes tips as "wages" reportable on the C-101 Quarterly Wage and Contribution Report. This means, all tips paid by the employer or reported to the employer as received shall be included in the total of wages paid.

If you have questions about tips as it relates to payment, record keeping, and pooling, please contact the Wage and Hour Program at VDOL at (802) 828-0267 or via e-mail sent to Labor.WageHour@vermont.gov. If you have questions about quarterly reporting of tips, please contact Employer Services at 802-828-4344 or via email sent to Labor.UlandWages@vermont.gov.