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CALIFORNIA EMPLOYMENT LAW UPDATE

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Starbucks Must Pay Baristas $86 Million Plus Interest For Tip-Pooling Arrangement

On March 21, 2008, a San Diego County Superior Court judge ruled that Starbucks violated California law by allowing shift supervisors to share in the customer tip pool. Jou Chou, a former Starbucks barista in La Jolla who alleged shift supervisors were sharing in employee tips, filed the lawsuit in October 2004. In 2006, the case was granted class-action status. Judge Patricia Cowett ruled that the Seattle-based coffee chain must pay a statewide class of about 120,000 baristas employed by the company since 2000 $86 million plus interest. The court also ruled that Plaintiffs are entitled to an injunction preventing Starbucks from forcing employees to share their tips with shift supervisors.

Tip-pooling arrangements are governed by California Labor Code section 351, which states that an employer or its "agents" cannot share tips intended for hourly workers. Judge Cowett found that Starbucks shift supervisors were "agents" due to their authority to oversee and direct other workers, and thus should not be allowed to share in the customer tip pool.

The California Labor Code defines an employer agent as "every person…having authority to hire or discharge any employee or supervise, direct, or control the acts of employees." California Labor Code section 350(d). This definition of "agent" has been clarified by California courts and the California Division of Labor Standards Enforcement to include any manager or supervisor who has the authority to either hire, fire, discipline, assign work, schedule shifts, or set wages. It is not necessary, however, that the supervisors spend the majority of their time performing these duties in order to be considered "agents." Supervisors may be agents of the employer even when they spend most of their time performing tasks such as greeting customers, seating them, and performing other host or busser responsibilities.

Judge Cowett's ruling utilizes a broad reading of who should be considered an agent of the employer. Using Judge Cowett's analysis, even if the shift supervisor performs essentially the same type of activities as the non-supervisor employees - such as making coffee and serving customers alongside non-supervisor baristas – that person could still be considered an agent of the employer.

Starbucks states on its website that it intends to appeal the ruling. In the meantime, all employers who allow tip sharing should carefully review their practice to ensure they are not vulnerable to similar lawsuits.

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