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CALIFORNIA EMPLOYMENT LAW UPDATE

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California Court of Appeal Overturns $105 Million Award to Employee in Starbucks Tip-Pooling Case

On June 2, 2009, the California Court of Appeal, Fourth Appellate District issued its opinion in *Chau v. Starbucks Corporation*. Reversing the Superior Court of San Diego County's decision, the court held that Starbucks did not violate Labor Code section 351 by permitting shift supervisors to share in tips placed by customers in a collective tip box. Employers are allowed to equitably distribute collective tips among all employees who provide the service that the tip rewards, even when an "agent" of the employer is part of the service team.

In *Chau*, the Plaintiffs challenged Starbucks' policy of allowing shift supervisors to share in tips placed by customers in a collective tip box as a violation of Labor Code section 351, which protects the gratuities left to employees as solely their property and prohibits employers or their agents from collecting, taking or receiving any part of the gratuity left for an employee. Plaintiffs alleged that shift supervisors are "agents" under Labor Code section 350(d) due to their authority to oversee and direct other workers and therefore should not be allowed to share in the tips left in a collective tip box. The trial court agreed, awarded the class of baristas $86 million plus interest for tips shared since 2000, and enjoined Starbucks from continuing any tip distribution policy that included shift supervisors as recipients.

The Court of Appeal disagreed and reversed the trial court's decision in its entirety, holding that Labor Code section 351 does not expressly prohibit an employer from equitably dividing tips among employees who actually provided the service when customers place such tips in a collective box. The court reasoned that because shift supervisors serve customers like baristas, as part of the service team, tips left in a collective box are tips given *to* the shift supervisor for his or her own service and are not tips given to the barista which are then transferred to the supervisor. The court distinguished the instant case from previous tip-pooling cases, such as *Jameson v. Five Feet Restaurant, Inc.*, (2003) 107 Cal.App.4th 138, which found that tip-pooling violates section 351 if an employee is required to give a share of his or her tips to an employer or agent.

Notably, the Court of Appeals avoided deciding the issue of whether the trial court erred in determining that shift supervisors were "agents." The court concluded that Starbucks' policy amounted to "tip apportionment" because a customer understands that a tip placed in the collective tip box will be shared among the entire team that provided service. Shift supervisors, even if deemed agents, are not prohibited by Labor Code section 351 from receiving the fair portion of tips in the collective box attributable to their own service.

The impact of the decision for California employers with tip boxes is uncertain. While a victory for Starbucks, the court took great care to caution against broad application of its decision, stating that the ruling was highly fact-specific. The court cited as key facts the high degree of similarity between the work of baristas and shift supervisors, the team setup where both baristas and shift supervisors served customers throughout the day, the use of collective tip boxes, and the existence of a fair and equitable system for distributing the tips based on hours worked with no regard to job title.

At least one of the Plaintiffs' attorneys has indicated in the press his clients' intention to appeal the ruling to the California Supreme Court. In the meantime, employers that have tip sharing arrangements should continue to proceed carefully and review their own policies to ensure conformity with this recent decision.

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