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PAYROLL SERVICE



THE RESTAURATEURS GUIDE TO PAYROLL AND HR

*WHAT YOU AND YOUR STAFF NEED TO KNOW ABOUT COMPLIANCE,
TIPS, AND TAXES*



INTRODUCTION

We've all seen it—a waiter who drives a slick sports car despite claiming only \$18,000 a year in wages on his tax return.

What gives? Well, we all realize that tipped employees hope to claim as little as possible in tips on their tax returns so that they pay as little as possible in taxes. As restaurant owners and managers, we want to see our staff members happy and be able to keep as much of their hard-earned wages as they can.

But it's important to know what the rules say. This guide will be important if you:

- Are new to the restaurant industry and need to know your employee rights
- Are a restaurant industry veteran who still needs clarification on rules or never had them fully explained to you
- Are a restaurant owner or manager who wants to be in compliance with rules while making sure that tipped employees keep as much of their earnings as they can

If this describes you, then this guide will be valuable reading material.

And we'll try and keep things brief and to the point. You've got hungry customers, so don't keep them waiting.

WHAT RESTAURANT OWNERS AND MANAGERS NEED TO KNOW

Employees at Your Restaurant

As a restaurant owner, the IRS sees you as the boss and person who's responsible for making sure that employees are paid correctly. This means that employees must claim their tips and pay their fair share of taxes. Therefore, it's in your best interest to make sure your employees are aware of how tips and taxes work. You could be asked to provide documentation that you've taken this task seriously, so be sure you have practices in place to educate employees on taxes and tips.

Minimum Wage

Making sure that your employees are being paid legally is a priority. If employees do not earn tips, then they must be making at least the minimum hourly wage as stated in your state or jurisdiction.

Similarly, tipped employees must be earning enough in tips to bring their average hourly wage to at least minimum wage level. If not, you must pay the difference. All employees, tipped or not, must be making at least minimum wage.

Employee Overtime

For tipped employees, overtime is based on the legal minimum wage and not on tipped earnings. If tipped employees work more than 40 hours per week, the extra amount paid is 1.5 times the minimum wage. A portion of a required service charge for large groups must further be paid as a standard earning. This amount cannot be included in the tips that bring a tipped employee's wages up to minimum wage level.

Training

It is important to provide documented training to employees on the legal requirements for reporting tips. Establish practices that promote honest reporting of tips. If you have any HR materials or an employee handbook, include disciplinary measures that can be used if an employee does not report tips properly.

Tip Pooling

Any tip pooling agreements should be made in writing and each participant and employee should keep a signed copy. When tracking pooled tips, include the amounts for shared tips for all participants receiving tips directly or indirectly from the pooled tips. If your restaurant practices voluntary tip pooling, you should still have documentation of the rules and of employees' compliance.

Marking Down Tips

Employees should have practices in place to record the amount of tips that they receive every day that they work. Some systems that track hours also let employees record and track tips. However, a simple written log that requires employees to input their tip amounts each day can work just as well. The IRS has example forms and formats that can be used for such purposes, which are available at [irs.gov](https://www.irs.gov).

Tips from Credit Cards

Records of credit card transactions and processing fees should be kept in line regardless if credit card tips are paid out daily or each week as part of payroll. It's also important to record any fees taken out of employees' tips. Employees should sign for any tips that are paid out from the register at the end of a shift. Such tips should also be recorded for payroll purposes and for tax calculations.

Local Laws

It's important to be aware of state and local laws that affect tipped employees. Some municipalities have higher minimum wages than the listed federal or state minimums. Some areas also have particular laws. In New York State, for example, the Spread of Hours Rule says that if an employee with a split shift works more than 10 hours from the beginning of their first shift to the end of their last shift during a day, then that employee must receive one additional hour of pay at the minimum wage rate.

Payroll Taxes

Payroll taxes like FICA, Medicare, and Social Security must be calculated and paid by all employees. As an employer, in addition to collecting these taxes from employees' total earnings, including tips, you must also pay the same amount on the employer side for FICA taxes. This means that, even though customers pay your employees tips, you must match their total earnings when paying payroll taxes. This rule also applies to state and federal unemployment taxes. While this may seem unfair to restaurant owners, failing to comply can mean steep fines.



Tips Statement

Even if your employees report their earned tips each day, it is good practice to have each employee sign a statement indicating the total tips that they received and were paid during each payroll period. If you are ever questioned about tips and wage compliance, such documentation will be crucial.

FICA Tip Credit

You may be able to recoup some of the excess FICA taxes that you are paying for your tipped employees. Speak with your CPA about filing for a FICA tip credit on your business taxes. To do so, you'll need a reliable method in place for tracking accumulated tips in order to receive a tax credit.

Your Payroll Provider

There are plenty of rules and regulations when it comes to wages, tips, and taxes. Your payroll processing provider should be able to answer any questions about payroll. If you have questions, contact ASAP Payroll to learn more.

WHAT TIPPED EMPLOYEES NEED TO KNOW

Tips

Tips are voluntary. Customers are not obligated to pay tips, even if it's customary and expected. Fortunately, most customers are empathetic enough and follow the common courtesy of paying tips. To an extent, all servers are in control of how much or how little they will receive in tips. If a customer tips based on service excellence, you can expect to receive more for good service.

Wages

Employers can pay an hourly rate that's lower than the minimum wage. It's expected, however, that you will make up the difference plus some, in many cases, in tips. Unlike waiters, however, kitchen staff and others who do not interact with customers can be paid differently. They do not receive tips in some cases and must receive at least minimum wage.

Pooled Tips

Employers can require that you share tips with other coworkers who also work directly with customers. If a customer leaves a large tip, you will then be required to share tipped earnings with other servers and potentially with other types of employees. This practice of pooled tips is common throughout restaurants. If your boss or employer, however, sits in the backroom and rarely interacts with customers, it is illegal for your boss to take some of your tips. While rare, such a scenario should never occur.

Cash Tips

Cash tips are required by law to be reported as part of your taxable income. An employee who earns more than \$20 in tips per month must report all of the tips received as taxable wages.

However, taxes and tips extend beyond employee obligations. Employers are also required to keep records of the tips that employees receive. Once you have reported how much in cash tips that you've received for the day, you can then keep the money.

It's crucial that the amount of tips that you claim matches the amount that an employer has recorded. If you claim that you have received an amount in tips that is lower than your employer's records indicate, you are going to run into some trouble.

Credit Card Tips

Tips that were paid using a credit card or debit card must be paid to you by your next paycheck. Or, an employer can pay out credit card tips as cash when your shift is over. That practice is up to them, as both options are permitted by law.

Regardless of how you receive your tips, your employer is permitted to deduct credit card processing fees from your tips. Typically, that means taking out 3 percent of your tips to cover card processing.

Your total tips, including cash and credit card tips, should be listed on your paystub during every payroll period. Remember, your employer can pay you an hourly rate that's lower than the minimum wage because it's expected that you will make at least minimum wage when including tips. The federal minimum wage is \$7.25 per hour, although it's higher in many states and jurisdictions. Restaurant employees who don't receive tips must be paid at or above minimum wage.

Claiming Tips as Part of Earnings

The truth is, a lot of tipped restaurant employees do not claim their tips as part of earnings. Or tipped employees sometimes claim only enough to show that they've earned minimum wage. But there are several things to know about this approach.

For starters, doing so is risky. You are legally required to pay income taxes on all of your income, which includes tips. The IRS has the right to investigate and review sales receipts to determine if employees are reporting a reasonable amount of tips for tax purposes. If the IRS suspects that you are not claiming a sufficient amount in tips reflective of what you actually earned, both you and your employer could be audited. That would not be good.

By not claiming tips, you could be harming yourself in the long run. When you retire, you will be eligible to collect social security and Medicare benefits. However, your ability to collect these benefits, and the amount that you can collect, depends on how much you paid into these programs while you were working and on how much your employer contributed based on your reported earnings.

The less you claim as far as earnings, the less you will be able to collect from these benefits in the future. When it comes time to retire, you may not be able to retire, or to retire as comfortably if you've been shortchanging your benefit contributions along the way.



A COMPLIANCE CHECKLIST FOR PAYING TIPPED EMPLOYEES

- Meeting minimum wage requirements
 - Check state and local jurisdiction minimum wage requirements
 - Pay enough to bring tipped employees to minimum wage level
 - Tipped employees receive overtime at standard minimum wage
 - Pay the service charges shared with employees as earnings
- Employees receive documented training on tips and taxes
- Pooled tips are documented and agreements are signed
- A daily process for recording tips is in place
- Tips are reported in payroll
 - Cash tips are recorded and taxed
 - Credit card tips are recorded and paid out
 - Mandatory service charges are not included as tips
- Employees should sign-off on tips received after payroll
- Ask your CPA about a FICA tip credit
- Review any local laws concerning tipped employees
- For help and questions, contact ASAP Payroll