



**FLSA2024-02**

December 18, 2024

Dear **Name\***:

This letter responds to your request for an opinion concerning whether an individual who holds at least a 20-percent equity interest in a brewery and taproom and who also tends bar may receive pooled tips from employees working as bartenders. You represent that you do not seek this opinion for any party that the Wage and Hour Division (WHD) is currently investigating, or for use in any litigation that commenced prior to your request. Based on the facts presented in your request, we conclude that the individual may not keep other bartenders' tips because the individual is a manager or supervisor.

Because your request emphasizes the statutory prohibition on managers and supervisors keeping tips, this letter does not analyze whether the individual is also an "employer" who is prohibited from keeping employees' tips under 29 U.S.C. 203(m)(2)(B). An individual is an employer under the FLSA if they "act[] directly or indirectly in the interest of an employer in relation to an employee." 29 U.S.C. 203(d). To the extent the individual described can be considered an "employer" under the FLSA, the individual is prohibited from keeping employee's tips under section 3(m)(2)(B) of the FLSA for that reason as well. An employer may not keep an employee's tips for any purposes. 29 U.S.C. 203(m)(2)(B).

## **BACKGROUND**

According to the information provided to WHD, your client operates a brewery and taproom where it employs bartenders. Bartenders receive a direct cash wage equal to or higher than the Fair Labor Standards Act (FLSA) minimum wage which currently is \$7.25 per hour. In addition, bartenders regularly receive tips from customers. Those tips are "pooled and distributed among the bartenders who performed work for the tips."

You have stated that there is an individual who holds at least a 20-percent equity interest in the business and manages and supervises the bartenders. This individual also tends bar to "regularly engage with the customers."

## **GENERAL LEGAL PRINCIPLES**

Section 3(m)(2)(B) of the FLSA prohibits an "employer" from "keep[ing] tips received by its employees for any purposes, including allowing managers or supervisors to keep any portion of employees' tips[.]" 29 U.S.C. 203(m)(2)(B). An employer may not receive tips from a tip pool and may not allow supervisors or managers to receive tips from the tip pool. *See* 29 C.F.R. § 531.54(d).

Under the FLSA, a business owner may be considered a manager or supervisor for purposes of section 3(m)(2)(B). A business owner who owns at least 20-percent equity interest in the enterprise and is actively engaged in its management, as described in 29 C.F.R. § 541.101, is a manager or supervisor who may not keep other employees' tips. *See* 29 C.F.R. § 531.52(b)(2); Wage and Hour Division Field Operation Handbook (FOH) 30d02(e); *see also* 29 C.F.R. § 541.102 (providing examples of "management").

When an individual is a manager or supervisor, the "employer may not allow" them "to keep any portion of an employee's tips." 29 C.F.R. § 531.52(b)(2). A manager or supervisor may, however, keep tips that they receive directly from customers based on the service that they directly and solely provide. 29 C.F.R. § 531.52(b)(2). For example, a manager or supervisor who serves their own tables may keep their own tips. *See* FOH 30d02(d)(1). In addition, an employer may require a manager or supervisor to contribute some of their own tips into a mandatory tip pool, even though the manager or supervisor is prohibited from receiving any tips from the tip pool. *See* FOH 30d02(d).

## **OPINION**

In your letter, you ask if an individual with at least a 20-percent equity interest in a brewery and taproom who also tends bar may receive pooled tips from employees working as bartenders "during the time" the individual "works as a bartender." Based on the facts described in your request, this individual owns at least a 20-percent equity in the enterprise, and you represent that the individual is actively engaged in managing the bartenders. Thus, this individual is a "manager or supervisor" under 29 U.S.C. 203(m)(2)(B). Accordingly, based on the scenario presented in your letter, this individual may not receive any tips from the bartender tip pool, as doing so would violate section 3(m)(2)(B) of the FLSA. *See* 29 U.S.C. § 203(m)(2)(B); 29 C.F.R. § 531.52; *see also* 29 C.F.R. § 531.54(d). If an employee qualifies as a manager or supervisor, even if they also perform tipped work, they cannot keep other employees' tips, including, for instance, by receiving them from a tip pool or by receiving tips that were based in part on other employees' work and which were collected in a tip jar.

The individual may, however, keep tips that they receive directly from a customer based on the service that this individual directly and solely provides. For example, if this individual is the only person tending bar during a certain period of the day, the individual may keep tips left by bar customers during the period in which the individual was the only person working at the bar because the tips were left for the service that the individual directly and solely provided. *See* FOH 30d02(d)(1).

But if it is not possible to attribute a tip solely to the service the individual provides, the individual may not keep any portion of the tip. For example, if the taproom pools all of the bartending tips together, the individual may not take any portion of the tips from the pool even if the individual also tends bar. For additional examples, *see* [WHD Fact Sheet #15B: Managers and Supervisors Under the Fair Labor Standards Act \(FLSA\) and Tips](#).

This opinion is based exclusively on the facts and circumstances described in your request and is given based on your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein.

We trust that this letter is responsive to your inquiry.

Sincerely,

A handwritten signature in cursive script that reads "Jessica Looman".

Jessica Looman  
Administrator

**\*Note: The actual name(s) was removed to protect privacy in accordance with 5 U.S.C. § 552(b).**