

FLSA-858

June 28, 1985

This is in response to your letter of May 17 in which you request an opinion as to whether a wine-server/captain-host employed by your client may receive a 15-percent tip on the sale of bottled wine served with a meal.

The Fair Labor Standards Act (FLSA), which is administered by the Wage and Hour Division, is the Federal law of most general application concerning wages and hours of work. The Act requires that all covered and nonexempt employees be paid at least \$3.35 an hour for all hours worked and overtime pay of one and one-half times their regular rates of pay for all hours worked over 40 in a workweek.

As explained in FLSA section 3(m), tips received by tipped employees may be counted by an employer as wages for purposes of the Act in an amount up to 40 percent of the applicable minimum wage. In addition, the Act requires that (1) the tipped employees be informed by the employer of the tip credit provisions in FLSA section 3(m), and (2) all tips received by such employees be retained by the employees. A "tipped employee" is defined in FLSA section 3(t) as any employee engaged in an occupation in which he or she customarily and regularly receives not less than \$30 a month in tips.

The Congressional Record (in particular pages 42 and 43 of Senate Report No. 93-960, February 22, 1974) indicates that employees who "customarily and regularly" receive tips are waiters, bellhops, waitresses, counter men, busboys, and service bartenders. It also indicates that janitors, dishwashers, chefs, and laundry room attendants are not tipped employees.

You refer to an individual employed as a wine-server/Captain-host who escorts customers to their tables and assists them in making a wine selection. As a wine-server/captain, this individual explains the wine list, brings the selected bottle to the table, and serves the wine to the customers. You state that this individual "provides just about 100% of the customer service on the sale and serving of wine by the bottle..." This employee's duties as a wine-server/captain most closely resemble those of a bartender and appear to conform with the Act's definition of a "tipped employee."

The employer that you represent wishes to ensure that the wine server/captain-host receives a proportionate share of the tip for the meal and wine as indicated by the customer on the guest check. Therefore, if the customer indicates a 15-percent tip on the guest check, the wine-server/captain-host will receive that percentage of the wine price as a tip for his or her services. The waiter or waitress will receive the same percentage of the meal price as a tip for services.

Based on the information in your letter, it is our opinion that your client's proposed method of providing tips to the wine-server/captain-host and the waiters or waitresses complies with the Act's requirements.

We trust that the above information is responsive to your inquiry. If we can be of further assistance, please do not, hesitate to contact us again.

Sincerely,

Herbert J. Cohen
Deputy Administrator