

Second Circuit Refers Tip Pooling Questions to the New York Court of Appeals

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The Second Circuit Court of Appeals heard a tandem appeal of two related cases in which baristas sued Starbucks, contending that shift supervisors and assistant store managers are not permitted to receive distributions from a store's tip pool because such categories of employees are supervisors who are not permitted to receive such tips under New York Labor Law § 196-d.

Barenboim v. Starbucks Corp. and Lawrence v. Starbucks Corp., No. 10-4912-cv (2d Cir. Oct. 23, 2012): The Second Circuit Court of Appeals heard a tandem appeal of two related cases in which baristas sued Starbucks, contending that shift supervisors and assistant store managers are not permitted to receive distributions from a store's tip pool because such categories of employees are supervisors who are not permitted to receive such tips under New York Labor Law § 196-d. Starbucks argued that because these categories of employees perform direct customer service, they are the types of employees entitled to receive tips under the statute. The court noted that, although Section 196-d prohibits "agents"—elsewhere defined as "supervisors"—from retaining tips, the New York law does not define either term. The court further noted that if an employee is not an agent and therefore eligible to receive tips, the law is unclear whether an employer can deny tip-pool distributions even though customers paid gratuities into the pool in compensation for the employee's service. Given the plausible arguments raised by the plaintiffs in opposition to summary judgment regarding these questions, and the significant New York state interests, the court deferred decision and certified them to the New York Court of Appeals. The answers issued by the New York Court of Appeals should greatly clarify a muddled area of New York's labor law.

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