

Tip Credit Does Not Apply to Delivery Drivers Declares Connecticut Supreme Court

April 4, 2017

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The case, *Amaral Brothers, Inc. v. Department of Labor*, addressed the issue of whether delivery drivers (in this case, drivers for a pizza chain) fall within the scope of employees who are eligible for a “tip credit.”

Under Conn. Gen. Stat. § 31-60(b), a tip credit may be taken for “persons, other than bartenders, who are employed in the hotel and restaurant industry . . . who customarily and regularly receive gratuities.”

A tip credit allows businesses—namely, hotels and restaurants—to pay “service employees” salaries below the state minimum wage. This is because employees in some positions, on account of their service to customers, normally receive gratuities in addition to their base wages, making up any difference between their salaries and the minimum wage rate. Specifically, a “service employee” has been defined as “any employee whose duties relate solely to the serving of food and/or beverages to patrons seated at tables or booths, and to the performance of duties incidental to such service, and who customarily receive gratuities.”

The Connecticut Department of Labor (CT DOL), the agency responsible for enforcing the minimum wage requirement, determined that delivery drivers were not tip-credit eligible, primarily because it found their “service” was limited to passing food to customers at their door. The CT DOL rejected the plaintiff’s argument that a driver transporting pizza to a customer’s home in a car is comparable to a waiter carrying food to a customer at a table.

Upon appeal by the pizza restaurateur, the Connecticut Supreme Court affirmed that delivery drivers do not fall within the scope of the tip credit. The court held that it was “reasonable for the department to conclude that the legislature did not intend that employees such as delivery drivers, who have the potential to earn gratuities during only a small portion of their workday, would be subject to a reduction in their minimum

wage with respect to time spent traveling to a customer's home and other duties for which they do not earn gratuities.”

With this ruling by the Supreme Court affirming the position of the CT DOL, it can be expected that the agency will pay close attention to how delivery drivers are paid in Connecticut. Accordingly, those in the restaurant and hotel industries should take time to review how their delivery drivers are paid. In addition, if waitstaff are also utilized as delivery drivers, it is best practice to break out the time spent on each of those duties if the tip credit is being utilized, so as to have adequate records if challenged.

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