

Tip pooling: What's fair and reasonable?

Under California Labor Code section 351, employers may pool tips and distribute them in a manner that is “fair and reasonable.” What that means in practice depends on the circumstances.

In a recent case, a simple formula that shared the tips at the end of each week based on the number of hours worked was deemed fair and reasonable.

Recent case: Jacob worked as a server at Coffee Bean and Tea Leaf, a coffee shop in Rancho Cucamonga. Customers at the store could choose to leave tips in a “tip jar” positioned on the counter next to the cash register. Then, at the close of business each day, a shift supervisor collected the money in the jar and secured the cash in a deposit box inside the store safe.

The shift supervisor didn't have to count the tips or segregate the funds for each of the three daily shifts. Instead, at the end of each week, the supervisor would count the tips collected throughout the week and distribute the money to servers.

This system combined tips from 21 different shifts.

Supervisors then gave each eligible employee a prorated share of the total tip amount, based on the number of hours each eligible employee worked that week.

Jacob sued, alleging that the method wasn't “fair and reasonable” because it redistributed tips from busier shifts to servers who worked slower shifts.

He claimed that the only fair and reasonable way to allocate the pool funds would be to count the tips at the end of each shift and segregate them for distribution to those servers who actually worked that shift.

The court disagreed.

It concluded that similar arrangements had passed muster in earlier cases. It dismissed Jacob's lawsuit. (*Davis v. International Coffee and Tea*, Court of Appeal of California, 2018)