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Client Alert: Rhode Island Enacts “Tip Protection” Law

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On June 28, 2022, Rhode Island enacted new “tip protection” legislation. The law, which applies to all employers of tipped employees, prohibits employers from retaining employee tips, creates new requirements for tip pools, and sets requirements for deductions from tips for credit card processing. Mirroring the definition under the federal Fair Labor Standards Act (FLSA), the law defines a “tipped employee” as one who regularly and customarily receives \$30 or more in tips per month.

The law also mirrors the FLSA in that it distinguishes “service charges” from tips. Service charges are *compulsory* amounts assessed to customers and are the property of the employer. As such, service charge amounts are not counted as tips for the purposes of establishing whether an employee is a “tipped employee.” However, if the service charges are distributed to employees, the amounts can be used to satisfy minimum wage and overtime pay requirements.

Further, the law states that tips are the sole property of the tipped employee, and therefore, employers may not keep any amount of an employee’s tips. The one exception to this rule is that employers may make deductions for credit card processing fees associated with sales that include tips, but only if this would not bring the employee below the minimum wage. Before making any such deduction, the employer must notify the employee of the deduction amount and must pay all amounts due by the next pay day. That is, an employer may not withhold any amount while awaiting reimbursement from the credit card company.

Additionally, the statute states that tip pooling arrangements may be valid among employees “who customarily and regularly receive tips” and sets out the requirements for a valid tip pool. A tip pool can be established as long as the employer notifies its employees of any required tip pool contribution amount, only takes a tip credit for the amount of tips each employee ultimately receives, and does not retain any of the employees’ tips for any purposes other than deductions taken for credit card processing fees, as set forth above.

Because this law is now in effect, Rhode Island employers with tipped employees should review their policies and practices to ensure they are in compliance. Specifically, employers should verify that they are not retaining any portion of employees’ tips, that their tip pooling arrangements are valid, and that employees are properly notified about tip pooling or credit card deductions.