



Interpretive Notice & Formal Opinion (“INFO”) #3C: Tips (Gratuities) and Tipped Employees Under Colorado Wage Law

Overview

This INFO covers how Colorado law protects “tips” that employees receive, as well as how and when employers can pay “tipped employees” less than full minimum wage. Key definitions:

- “Tipped employee”: An employee regularly receiving over \$30 per month in tips.
- “Tip” (or gratuity): A customer payment in any form (cash, credit, electronic, etc.) for goods or services that is voluntary, *i.e.*, above the required payment, and discretionary as to what, if anything, the customer pays. Tips are earned and vested as soon as paid by customers, and must be given to employees timely without forfeiture, like any wages or compensation.¹

Employers Paying “Direct Wages” under Minimum Wage Based on a “Tip Credit”

Wages employers pay tipped employees are called their “direct” or “cash” wages. Direct wages can be less than the full minimum wage by up to \$3.02, an amount that’s called the employer’s “tip credit”:²

Minimum Wages with & without Tip Credits	Colorado (except Denver):		Denver:	
	2022	2023	2022	2023
Full minimum wage	\$12.56	\$13.65	\$15.87	\$17.29
With tip credit: up to \$3.02 lower; but in Denver, for <i>only</i> food & beverage workers	\$9.54	\$10.63	\$12.85	\$14.27

There are several limits on when employers can use tip credits to pay direct wages below full minimum wage:³

- (1) Employers **can’t pay more than \$3.02 below full minimum wage, no matter how high tips are**. In 2023, that requires at least \$10.63 (\$14.27 in Denver) in direct wages, even if tips are (for example) \$20 per hour.
- (2) Employers **must pay enough in direct wages for total pay, with tips, to reach full minimum wage in each workweek**. If an employer pays direct wages below full minimum wage, but tips end up too low to raise total pay to full minimum wage, then the employer must make up the difference in direct wages.⁴

Example 1: In 2023, a non-Denver employer paid direct hourly wages of \$10.63. Tips raised total pay above full minimum wage (\$13.65). One week, tips drop to \$2.00 per hour, making total pay \$12.63, which is \$1.02 below full minimum wage. The employer must make up the difference, by adding \$1.02 per hour in direct wages, in the pay period for the week with lower tips.

Example 2: If the job in Example 1 is in Denver, direct hourly wages must be at least \$14.27 (\$3.02 below *Denver’s* minimum), or higher if tips are under \$3.02. If tips drop to \$2.00 per hour, the employer must raise direct wages to \$15.29 (\$2.00 below full minimum) to make up the difference.

¹ [C.R.S. §§ 8-4-101\(14\)\(a\)\(II\)](#) (“wages’ or ‘compensation’” include “[a]ll amounts for labor or service performed,” regardless of how the amount is set, as long as “earned, vested, and determinable”); [8-4-103\(1\)](#) (“All wages or compensation ... earned” must be paid timely); [8-4-103\(6\)](#) (employer cannot “claim ... or control” gratuities); [8-4-121](#) (no waiver or modification of Wage Act rights). Tips may still be pooled among tipped employees, as detailed below.

² For updated Colorado minimum wages, see [Publication And Yearly Calculation of Adjusted Labor Compensation \(“PAY CALC”\) Order](#), 7 CCR 1103-14, Rule 1.2, and Colo. Const. Art. XVIII, § 15; as to local minimum wages, see [INFO #19](#).

³ Some limits are from tips law, others from law that minimum wage exceptions are interpreted narrowly. C.R.S. §§ 8-6-102, 103(6); [COMPS Order](#), 7 CCR 1103-1, Rule 8.7(A).

⁴ [COMPS Order](#), 7 CCR 1103-1, Rule 6.2.3.

- (3) Employers **can't claim tip credits from mandatory charges**. The tip credit allows direct wages below full minimum wage only if “tips” make up the difference. Mandatory charges, like a 20% “service charge,” aren't “tips,” because customers can't choose whether and how much to pay. They're just part of a service or good costs; a \$10 sandwich plus a 20% service charge is a \$12 sandwich. However:
- (a) Employers can use service charges to fund employee wages, but not for a “tip” credit allowing direct wages below full minimum wage.⁵
 - (b) If an employer communicates that automatic charges goes to (for example) servers (e.g., calling it a “gratuity,” a synonym for “tip” in wage law), then they're still service charges, not tips, but they're “wages or compensation” the server must be paid — because the employer agreed the amount goes to the server, satisfying the “wages or compensation” definition, and impacting customers tips.⁶
- (4) Employers **can't claim tip credits if they take away or divert tips**. That means employers:
- (a) **can't make tipped employees share tips with non-tipped employees** — often called “tip pooling,” or “tipping out” other staff — like managers or “back of house” staff (cook, dishwasher, etc.);⁷ and
 - (b) **can't keep any tip funds as employer revenue**, which is **unlawful even if it claims no tip credit** — see below (“Limits on Sharing (Pooling, Tipping Out, etc.) or Diverting Tips ...”).

Tip Credits for Employees Working in Both Tipped and Non-Tipped Roles

Tip credits can apply to *all* hours of those doing a mix of tipped and non-tipped work only under two conditions:

- (1) **The non-tipped work must “directly support” the tipped work.**⁸ For example, for restaurant servers, non-tipped work “directly supporting” tipped work:
- (a) includes refilling condiments, making coffee, table setup or cleaning, or idle time awaiting tipped work;
 - (b) does not include bathroom or kitchen cleaning, maintenance, or window-washing; and
 - (c) does not include food preparation, *except* for workers who, after preparing food, directly serve it to customers, such as at a sushi bar, a bar, or an ice cream counter.⁹
- (2) **The non-tipped work must not take a “substantial” amount of time**, which means it must be:
- (a) **not more than 20% of the tipped employee's weekly hours** — the traditional “80/20 rule”; and
 - (b) **not more than a half-hour continuously** — because doing non-tipped work that long is a departure from the tipped job into a non-tipped job.¹⁰

⁵ *Accord* 29 C.F.R. §§ 531.52, 531.55(a) (“A compulsory charge for service, such as 15 percent ... , is not a tip and, even if distributed by the employer to its employees, cannot be counted as a tip ... in applying [tip credits] Similarly, where ... banquet facilities include amounts for distribution to employees ... , the amounts so distributed are not counted as tips....”).

⁶ Under the Wage Act, “wages or compensation” include “[a]ll amounts for labor or service performed,” regardless of how the amount is set, as long as “earned, vested, and determinable.” C.R.S. §§ 8-4-101(14)(a)(II).

⁷ *COMPS Order*, 7 CCR 1103-1, Rule 1.10. An “employer loses its ... tip credit” if it “requires tipped employees to share tips with (1) employees who do not provide direct customer service or (2) managers.” *Shahriar v. Smith & Wollensky*, 659 F.3d 234, 240 (2d Cir. 2011) (citing *Myers v. Copper Cellar*, 192 F.3d 546, 550-51 (6th Cir. 1999) (“Because the salad preparers abstained from any direct intercourse with diners, worked entirely outside ... [diner] view ... , and solely performed ... food preparation or kitchen support ... , they could not be validly categorized as ‘tipped employees’ [For] shifts in which salad mixers were included within the tip pool, the pooling ... was illegal; thus each employee ... compelled to contribute ... [was] entitled to payment of the full ... minimum wage for all work ... [in] those shifts.”)).

Those not directly tipped still can qualify if their direct customer interactions impact tips — for example, bussers may help servers by clearing tables, and hosts may “sufficiently interact with customers” to generate “undesignated tips” if they “greet customers, supply them with menus, seat them at tables, and ... ‘enhance the wait.’” *Id.* at 550; U.S. DOL [Field Operations Handbook](#), Ch. 30, 30d04.

⁸ 29 C.F.R. § 531.56(f)(1)(ii). The Division and the federal Wage and Hour Division (“WHD”) previously used the term “related duties.” The Division agrees with WHD’s replacement of that term with “directly supports,” a term consistent with the term “related duties” but more precise, and that avoids the problem that “related” could be misinterpreted to include work only “remotely related to the tipped occupation.” 86 FR 60114, 60129 (Oct. 29, 2021).

⁹ 29 C.F.R. §§ 531.56(f)(3)(ii), (5)(ii).

¹⁰ 29 C.F.R. § 531.56(f)(4). The Division previously applied WHD’s 80/20 rule, and agrees with WHD’s elaboration that “substantial” non-tipped time also includes (even if not 20% of time) “continuous” time of over a half-hour on non-tipped

Example 3: Several restaurant servers spend 10% or 30% of their time on various non-tipped duties. The table below shows when a tip credit can and can't apply to their work:

(1) Does the non-tipped work "directly support" tipped work?	(2) Is the non-tipped work time "substantial"?		
	(a) 10% of time & not over 30 min. at once	(b) 10% of time, as several 1-hour periods	(c) 30% of time
Al refills table items (ketchup, salt, etc.)	✓ Tip credit for all hours (just 10%, and not 30 continuous minutes, isn't "substantial")	✓ Tip credit for the 70-90% of time serving customers ✗ No tip credit for the 10%-30% non-tipped work (over 20% <u>or</u> 30 continuous minutes is "substantial")	✓ Tip credit for the 70-90% of time serving customers ✗ No tip credit for the 10%-30% non-tipped work (over 20% <u>or</u> 30 continuous minutes is "substantial")
Bo cleans rest rooms	✗ Doesn't directly support tipped work, so the tip credit can't apply to any non-tipped time	✓ Tip credit for the 70-90% of time serving customers ✗ No tip credit for any time on non-tipped work	✓ Tip credit for the 70-90% of time serving customers ✗ No tip credit for any time on non-tipped work

Limits on Diverting or Sharing Tips

- General requirements for valid tip sharing.** An employer may require tipped employees to share tips — whether "pooling" tips, "tipping out," etc. — *if*:
 - employees are told in advance** that their tips *will* be shared, and *how* they will be shared (what calculations, and which employees), including any required employee contribution to a tip pool;¹¹
 - customers are notified in writing** that tips they leave will be pooled, in any way (a notice on a menu, a table tent, a receipt, etc.) that gives customers notice before they decide on any tip;¹² and
 - employees receive at least full minimum wage in total pay**, which *can* include tips from a lawful tip pool, up to the maximum tip credit (if any) allowed for the employe (see "Tip Credits," above).¹³
- Specific limits on sharing or diverting tips.**
 - Employers **may** require tip sharing with **untipped** employees (cooks or dishwashers, etc.) — **but can't then claim a tip credit** (neither for the tipped nor the untipped employees) and must pay all employees at least full minimum wage in direct wages (*i.e.*, tips provide no credit toward the full minimum).¹⁴
 - Employers *may not* use tips in any of the following ways — and if they do, they can't apply a tip credit or tip sharing, and must pay full minimum wage as well as return any shared tips.¹⁵
 - to **pay employees' direct wages**, rather than paying tips to those tipped employees;
 - to **pay credit card processing fees** or similar costs; **or**
 - letting an **employer, manager, or supervisor share** those tips.¹⁶

work, as that amounts to performing separate, dual jobs — one tipped, one not. 86 FR 60114, 60138 (Oct. 29, 2021). That interpretation is consistent with existing law, *e.g.*, [Fast v. Applebee's Int'l](#), 638 F.3d 872, 880 (8th Cir. 2011) (no tip credit for "nontipped duties performed during distinct periods of time, such as before opening or after closing"); [Myers](#), 192 F.3d at 549 ("an employee who discharges distinct duties on diverse work shifts may qualify as a tipped employee during one shift, such as ... serv[ing] tables, but might not qualify ... on another shift ... perform[ing] maintenance tasks.").

¹¹ [C.R.S. § 8-4-103\(6\)](#) (employer can require tip pool only "on a preestablished basis among the employees"); [McFeeley v. Jackson Street Entertainment](#), 825 F.3d 235, 246 (4th Cir. 2016) (employer violating duties "to pay ... the minimum wage set for those receiving tip income and to notify employees of the 'tip credit' ... cannot therefore claim the 'tip credit'").

¹² [C.R.S. § 8-4-103\(6\)](#) ("gratuities are the sole property of the employee unless the employer notifies each patron in writing, including by a notice on a menu, table tent, or receipt, that gratuities are shared by employees").

¹³ [COMPS Order](#), 7 CCR 1103-1, Rule 6.2.3.

¹⁴ [COMPS Order](#), 7 CCR 1103-1, Rule 1.10; [29 C.F.R. § 531.54\(d\)](#).

¹⁵ [COMPS Order](#), 7 CCR 1103-1, Rule 1.10; [C.R.S. § 8-4-103\(6\)](#); [29 C.F.R. §§ 531.54\(c\)\(3\), \(d\)](#).

¹⁶ [C.R.S. § 8-4-103\(6\)](#) ("unlawful for an employer ... to assert a claim to, or right of ownership in, or control over gratuities"); [C.R.S. § 8-4-105](#); [COMPS Order](#), 7 CCR 1103-1, Rule 1.10; 29 U.S.C. § 203(m)(2)(B) ("An employer may not keep tips received by its employees for any purposes, including allowing managers or supervisors to keep any portion ... , regardless of whether or not the employer takes a tip credit."); [29 C.F.R. § 531.54\(b\)\(1\)](#) (elaborating same rule). The "managers or supervisors" who can't share tips are those whose duties match the federal "executive" exemption, even if they perform tipped duties when the tips are shared, such as filling in for servers out sick. [29 C.F.R. § 531.52\(b\)\(2\)](#). Exception: "A

Overtime Pay When Employers Claim Tip Credits

- For work beyond 40 hours per week, or 12 per day or shift, employees must be paid overtime — one and one-half times their regular rate — under the [COMPS Order](#), unless overtime-exempt.¹⁷
- If a tip credit is allowed, the overtime rate is time-and-a-half of the *full* minimum wage (not time-and-a-half of the *reduced* minimum wage), and the tip credit lowers *that* rate up to \$3.02.¹⁸ For example, in 2023:

The minimum overtime wage that employers can pay, based on the minimum wage with a tip credit	Colorado (except Denver):	Denver:
Time-and-a-half of full minimum wage (in 2023):	\$20.48	\$25.94
With tip credit (up to \$3.02 lower) (in 2023):	\$17.46	\$22.92

Required Recordkeeping

- Employers must keep records of hours, pay, and tips — which includes recording any differences between tips *left for* an employee and tips *paid to* that employee, such as from tip-sharing (pooling, tipping out, etc.). [COMPS Order](#) Rule 7.1 requires employers to keep an “accurate record for each employee” that includes a “(C) daily record of all hours worked; (D) record of credits claimed and of tips; and (E) regular rates of pay, gross wages earned, withholdings made, and net amounts paid each pay period.”¹⁹ For tipped employees:
 - A record of all “tips,” without any limitation, requires recording *all tips left for* employees, whether or not any part was shared in tip pooling, tipping out, etc. — e.g., all tips customers leave for their servers.
 - Employers are advised to keep such records on a daily or workweek basis.
 - If a tip is deemed to be equally for multiple persons (e.g., a collaborative restaurant service model of multiple staff serving one table), it must record only tip amount and which persons it was left for.
 - A record of “gross wages earned” and “credits claimed” requires records of tips *paid to* a tipped employee — which may differ from tips left for the employee in the case of tip-sharing.
 - These records must be kept on a daily or weekly basis — weekly tip logs, nightly “tip out” sheets, etc.
 - A *multi-week* total of tips left and paid (a biweekly or monthly pay period, etc.) is not sufficient, as it lacks the daily or weekly tip amounts required to calculate a tip credit.
- An employer must keep required records for cash tips — which generally won’t be documented on receipts — and tips that are otherwise documented (e.g., on credit card slips).²⁰ Failing to keep such records may prevent employers from showing that a tip pool excludes untipped employees (e.g., cooks) who can’t be included without nullifying tip credits, or that tips weren’t illegally retained by an employer, supervisor, etc.

Complaints. Employees can [file complaints in the Division](#) ([INFO #2](#) explains the process) or court if:

- denied any wages or compensation (including tips) they are owed;
- paid based a tip credit an employer couldn’t legally claim (e.g., from service charges rather than tips); or
- the employer unlawfully viewed tips as allowing pay of less than \$3.02 under full minimum wage.

For More Information: Visit the Division [website](#), call 303-318-8441, or email cdle_labor_standards@state.co.us.

manager or supervisor *may* keep tips that he or she *receives directly* from customers based on the service that he or she *directly and solely provides*.” [29 C.F.R. § 531.52\(b\)\(2\)](#) (emphasis added). Supervisors or managers (but not owners who qualify as “employers” under [C.R.S. § 8-4-101\(6\)](#)) performing *separate jobs*, one tipped and one non-tipped, may participate in a tip pool only when performing the tipped job for the entire period during which tips are shared — for example, for a daily tip pool, the entire day; for a single-event tip pool, the entire event.

¹⁷ Example: salaried managers, paid at least the minimum amount for exemption, who mostly supervise others, may be exempt; some employer types have other overtime exemptions. See [COMPS Order](#), 7 CCR 1103-1, Rules 2.2-2.5.

¹⁸ “Employees shall be paid time and one-half of the regular rate of pay” ([COMPS Order](#), 7 CCR 1103-1, Rule 4.1.1), and “[t]he regular rate includes all compensation paid to an employee, including ... minimum wage tip credits” (*id.* Rule 1.8.1).

¹⁹ [COMPS Order](#), 7 CCR 1103-1, Rule 7.1(C)-(E) (subparts (A)-(B) require other information not related to hours and pay).

²⁰ Tax law already requires employees to report, and employers to record, all tips, including cash tips. IRS [Publication 1244](#) at 2 (employees “must report ... tips to your employer,” including “cash left”); IRS [2021 General Instructions for Forms W-2 and W-3](#) at 16 (employers must report “[t]otal tips reported by the employee to the employer” on W-2 form).