



Interpretive Notice & Formal Opinion (“INFO”) # 3:

Tips (Gratuities) and Tipped Employees Under Colorado Wage Law

Overview

Employers of tipped employees must meet certain requirements under Colorado law. As defined in [Colorado Overtime and Minimum Pay Standards Order \(“COMPS Order”\), 7 CCR 1103-1](#), a tipped employee is any employee engaged in an occupation in which he or she customarily and regularly receives more than \$30.00 per month in tips (Rule 1.10). Tips can include cash and amounts designated by customers paying by bank or credit card.

Tip Credit Toward Colorado Minimum Wage

Employers may claim a “tip credit” toward the Colorado state minimum wage of \$12.32 per hour in 2021.¹ A tip credit no greater than \$3.02 per hour may be used to offset the direct wages (sometimes called “cash wages”) of tipped employees. If an employee’s tips combined with the employer’s direct wages of at least \$9.30 per hour do not equal the minimum hourly wage of \$12.32 per hour (computed on a consecutive seven-day workweek basis), the employer must make up the difference in direct wages.

Employees working in separate tipped and non-tipped occupations in the same workweek may receive the tip credit for only hours worked in the tipped occupation. For tipped employees in tipped occupations, employers may apply the tip credit for all hours worked if (A) the employees spend no more than 20 percent of their hours in a workweek performing non-tipped duties and (B) the non-tipped duties are related to the tipped work.

Example: For restaurant waitstaff, “related” work includes filling condiments, table setup/cleaning, or coffee-making. Related duties do not include repair work, bathroom maintenance, or window-washing, because waitstaff performing such different duties would effectively be employed in two separate jobs, one tipped and one not.²

This “80/20 rule” has applied for most of the past three decades under federal law. Regardless of federal law, the 80/20 rule applies under Colorado law, because the minimum wage reduction for tipped work is an exception to the full minimum wage, and all exceptions to wage rights are construed narrowly under Colorado Revised Statutes [C.R.S. § 8-6-102](#) and [COMPS Order, Rule 8.7\(A\)](#).

The following actions **prohibit an employer from taking a tip credit** toward the Colorado minimum wage:



- Employer-required sharing of tips with employees who do not customarily and regularly receive tips, such as management or food preparers, nullifies any tip credits.
- Deductions from an employee’s wages or tips for credit card processing fees are not allowed under [C.R.S. § 8-4-105](#). Such deductions also nullify any tip credits.

Tip Sharing Among Employees / Notification to Customers

As of August 2, 2019, [C.R.S. § 8-4-103\(6\)](#) prohibits an employer engaged in a business where the custom of tip-giving prevails from a claim to, right of ownership in, or control over an employee’s gratuities (tips). However, employers may require employees to share or allocate tips (“tip pool”) on a *pre-established basis* with other employees, so long as the employer notifies each customer in writing. That written notification may include notice on a menu, table tent, receipt, or signs visible to each customer.

¹ [COMPS Order, Rule 6.2.3](#); Colorado Constitution Art. XVIII, § 15.

² [Cope v. Let’s Eat Out, Inc., 354 F. Supp. 3d 976, 984 \(W.D. Mo. 2019\)](#).

When requiring tipped employees to participate in a tip pool on a pre-established basis, an employer must:

- 1) inform tipped employees that their tips will be shared among other employees;
- 2) notify tipped employees of the required contribution amount; and
- 3) ensure that a tip credit claimed by the employer (up to \$3.02 per hour) does not exceed the amount of tips actually retained by the tipped employee.

Calculating Overtime Pay When Claiming a Tip Credit

Covered Colorado employees must be paid overtime wages of time and one-half the regular rate of pay as required by the [COMPS Order](#). The regular rate of pay includes any tip credits toward minimum wage or overtime obligations, and the tip credit may not exceed \$3.02. Thus, when an employer takes a tip credit toward the minimum wage, the overtime rate must be calculated based on the *full* state minimum wage before taking the tip credit of up to \$3.02 per hour.

Example: If an employer takes the full tip credit of \$3.02 per hour in 2021, the tipped employee hourly overtime rate is calculated as follows: $\$12.32 \times 1.5 = \18.48 . $\$18.48 - \$3.02 = \$15.46$, the employee's direct wage rate for overtime.

Additional Information

Visit the Division's [website](#), call 303-318-8441, or email cdle_labor_standards@state.co.us.