

Client Alert



A report for clients and
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California Court of Appeal Reverses \$105m Judgment In Starbucks Case and Clarifies Permissible Tip-Allocation Practices

The California Court of Appeal has issued an important decision that has significant implications for California employers that have tip-sharing arrangements for their employees. In *Chau v. Starbucks Corp.*, 2009 WL 1522708 (Cal. Ct. App. Jun. 2, 2009), the court held that an employer can allow employees who have both supervisory and customer service duties to receive a portion of the tips that are left by patrons in collective tip-boxes. The court further held that customers who place tips in a collective tip-box (rather than giving the tip directly to a specific employee) intend their gratuity to be distributed among all members of the team that provided customer service to them, including employees who may have some supervisory duties. As a result, the San Diego trial court's judgment granting over \$105 million in restitution to a class of more than 100,000 current and former Starbucks coffee baristas has been overturned.

Bitter Barista Steamed at Having to Share Tips with "Supervisors"

As reported in an earlier [Client Alert](#), San Diego area barista, Jou Chau, filed a class action complaint against Starbucks on behalf of all current and former baristas in California. Chau alleged that Starbucks impermissibly allowed its shift supervisors to share in employee tips that usually are reserved for non-management employees under California law. Although Starbucks classified shift supervisors as non-

exempt customer service employees and paid them on an hourly basis, Chau argued that shift supervisors were in fact "agents" of management who should not be allowed to receive any portion of the customer tips that were left in collective tip-boxes. Starbucks countered that shift supervisors were not members of management because they had limited supervisory responsibilities and spent 90 percent or more of their working time serving customers and performing the exact same tasks as baristas. Significantly, neither the store managers nor assistant managers shared in the tips. After completion of a bench trial, the San Diego Superior Court ruled in Chau's favor and ordered Starbucks to pay its baristas \$86.7 million (plus 7 percent interest) as restitution for tips that had been improperly distributed to shift supervisors.

Tip-Allocation Held Permissible where Customer Intends to Tip the Entire Service "Team"

The California Court of Appeal reversed the judgment that had been rendered in favor of the plaintiff class. The court noted that, under California law, employers are allowed to create "tip pools" in which employees share and divide among themselves customer gratuities left for service employees so long as employers and their agents (i.e., supervisors and managers) do not take any portion of the tips intended for a particular customer service employee. However, the *Chau* court found that nothing precluded customers from tipping supervisors or managers directly. Furthermore, the practice of dividing tips left in collective tip-boxes does not trigger the same legal concerns, because customers who leave such tips generally intend for them to be shared by all members of the "team" who provided the customer with service, including employees who may have some supervisory responsibilities. In other words, such tips are not taken from a specific employee to whom they were directed and "pooled" for distribution to other non-service employees – instead they are merely equitably "allocated" to those employees who were a part of the service team.

Without determining whether the shift supervisors were actually “agents of the employer” and without providing a bright line rule on how significant or extensive an employee’s supervisory duties can be for purposes of tip sharing eligibility, the *Chau* court held that tips left in a collective tip-box could be shared with shift supervisors who were a part of the service team and whose duties were essentially indistinguishable from those of the non-supervisory employees (i.e., the baristas).

What Does This Mean For California Employers With Tip Sharing Arrangements?

This case is good news for employers. Although the court was careful to note that its decision was limited to the facts of the case before it (in which the “supervisory” employees at issue did not have the ability to hire, fire, promote or discipline employees and were generally engaged in the exact same types of customer service activities as non-supervisory employees), certain aspects of the *Chau* decision provide guidance that employers should be able to rely upon in implementing tip-sharing arrangements. Where a tip is given to a specific employee, any redistribution of that tip is considered “tip pooling,” and it may not be shared with any supervisory employee who is not primarily engaged in the same service activities as the employee who received the tip. Where the customer puts a tip in a container intended for distribution to all employees who provided service, the tip may be distributed to any employee who provided customer service – including employees with some supervisory duties.

Additionally, the plaintiff in *Chau* has announced his intention to seek review of his case in the California Supreme Court – so while the decision is currently binding law, its permanence is in some doubt. Prudent employers should therefore keep abreast of continuing developments and are well advised to seek the guidance of legal counsel when drafting or modifying their tip-sharing agreements. Nonetheless, the increased latitude that this holding extends to employers is a promising development and a welcome relief for companies struggling through these challenging economic times.

Given California’s arcane and labyrinthine wage and hour rules, it is important for employers to be proactive in seeking the aid of counsel to ensure they are in compliance with the law and are not exposing themselves to the risk of lawsuits. The Proskauer Wage-Hour Practice Group has significant expertise in navigating clients through difficult wage and hour classifications and other employment law issues that may be of concern to you. Your Proskauer relationship attorney or any of the attorneys listed in this Alert is available at your convenience to discuss these important issues and their possible ramifications for your workplace.

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