



ADMINISTRATIVE POLICY

STATE OF WASHINGTON DEPARTMENT OF LABOR AND INDUSTRIES EMPLOYMENT STANDARDS

TITLE: TIPS, GRATUITIES, AND
SERVICE CHARGES

NUMBER: ES.A.12

CHAPTER: [RCW 49.46](#)
[WAC 296-128](#)

ISSUED: 3/6/2019

ADMINISTRATIVE POLICY DISCLAIMER

This policy is designed to provide general information in regard to the current opinions of the Department of Labor & Industries on the subject matter covered. This policy is intended as a guide in the interpretation and application of the relevant statutes, regulations, and policies, and may not be applicable to all situations. This policy does not replace applicable RCW or WAC standards. If additional clarification is required, the Program Manager for Employment Standards should be consulted.

This document is effective as of the date of print and supersedes all previous interpretations and guidelines. Changes may occur after the date of print due to subsequent legislation, administrative rule, or judicial proceedings. The user is encouraged to notify the Program Manager to provide or receive updated information. This document will remain in effect until rescinded, modified, or withdrawn by the Director or his or her designee.

A. Tips and gratuities

1. What are tips and gratuities?

Tips and gratuities are amounts freely given by a customer to an employee. Employers must pay to an employee all tips and gratuities due to the employee. See [WAC 296-128-820](#).

Tips and gratuities due to an employee may not be used by the employer for any purpose except to administer a valid tip pool amongst qualifying employees.

If an employee files a complaint with the department alleging that their employer failed to pay to the employee all tips and gratuities due to the employee under [RCW 49.46.020](#), the department will investigate the complaint. The department will investigate the complaint pursuant to the procedures outlined in the Wage Payment Act, [RCW 49.48.082 through 49.48.087](#). See [WAC 296-128-820](#).

2. Do tips and gratuities count towards the state minimum wage?

No. Tips and gratuities are in addition to, and may not count towards, the employee's hourly minimum wage. A credit towards the minimum wage is not permitted. Employees must receive the full minimum wage.

Ordinances setting minimum wages above the state minimum wage, and the treatment of tips and gratuities under those ordinances, are subject to interpretation by the local authority. The department enforces ordinances as obligated wage payment requirements. See [RCW 49.48.082\(12\)](#) and [RCW 49.52.050\(2\)](#).

3. Are mandatory tip pools (required by the employer) allowed?

State law does not prohibit a tip pool amongst employees established by an employer. A tip pool established by an employer may not include individuals who are exempt from the definition of “employee” under [RCW 49.46.010\(3\)](#).

The department recommends that written policies be established to govern mandatory tip pooling arrangements, and that employees be informed of these policies.

4. What employees may be included in a mandatory tip pool?

State law does not specify what employees may be included in a tip pool amongst employees, except that those who are exempt from the definition of “employee” under [RCW 49.46.010\(3\)](#) may not be part of a mandatory tip pool. See [ES.A.1, Minimum Wage Act Applicability](#).

For example, managerial or supervisory workers that are exempt from the Minimum Wage Act as executive, administrative, or professional employees may not be part of a tip pool. See [ES.A.9.2 through ES.A.9.8](#) for further discussion of the “white collar” exemptions.

5. May employers administer tip arrangements established by employees?

Yes. If employees come to an agreement amongst themselves to share tips with other employees, the employer may, but is not required to, assist in administering the employee’s tip agreements, for instance by distributing credit card tips as requested by its employees. However, managerial or supervisory employees that are exempt under [RCW 49.46.010\(3\)\(c\)](#) may not be included in tip arrangements established by employees and an employer may not keep any portion of the tips received by its employees.

6. May an employer, manager, or supervisor accept tips?

Employers, managers, or supervisors may accept tips only for services they directly provide. Managerial or supervisory workers who are exempt under [RCW 49.46.010\(3\)\(c\)](#) may not be part of a tip pool.

7. May an employer adopt a policy against accepting tips and gratuities?

An employer may adopt and enforce a policy prohibiting an employee from accepting tips and gratuities. However, if a customer leaves a tip or gratuity in defiance of a policy prohibiting the employee from accepting them, the employer may not confiscate the tip.

8. More favorable standards

If there are differences between any applicable federal, state, or local laws, rules, regulations, or ordinances governing tips and gratuities, the standard more favorable or more protective to the employee is applied. See [RCW 49.46.120](#).

B. Service charges

1. What are service charges?

Service charges are a type of automatic charge added to a customer's bill for services related to food, beverages, entertainment, or portorage. An automatic charge is a service charge when it is a separately designated amount collected from customers that is described in such a way that the customer might reasonably believe that the charge is for the service provided by an employee. Service charges often appear to replace a tip or gratuity, or might discourage a customer from leaving the same amount of tip or gratuity.

Types of service charges may include charges identified as "service charge," "mandatory gratuity," "delivery charge," or "portorage charge." A mandatory gratuity that is automatically added to a bill, such as a restaurant charge for service for a party of more than a certain number, is a service charge.

Other types of charges or surcharges that are not described in such a way that the customer might reasonably believe that the charges are for the service provided by an employee, such as a fuel surcharge, late fee, cancellation fee, or parking fee, are not service charges under [RCW 49.46.160](#) and are not subject to this policy. For guidance on other types of surcharges, see the [Surcharge Guidelines](#) provided by the Washington Attorney General's office.

2. What are the requirements for service charges?

Employers must disclose the percentage of the service charge that is paid to the employee or employees serving the customer. This information must appear in an itemized receipt and in any menu provided to the customer. See [RCW 49.46.160](#).

For the purposes of this policy, the percentage of a service charge that is retained by the employer is referred to as the employer portion of the service charge. Employers are expected to accurately reflect actual service charge distributions to employees in their disclosures.

If any portion of a service charge is not clearly designated as being retained by the employer, it is due to the employee or employees serving the customer.

For the purposes of this policy, the percentage of a service charge that is due to the employee or employees serving the customer is referred to as the employee portion of the service charge. The employee portion of a service charge must be paid to the employee. See [RCW 49.46.020\(3\)](#). The employee portion of service charges are in addition to hourly wages paid or payable to the employee or employees serving the customer. [RCW 49.46.160\(2\)\(c\)](#).

If an employee files a complaint with the department alleging that their employer failed to pay to the employee all service charges due to the employee under [RCW 49.46.020](#) and [49.46.160](#), the department will investigate the complaint. The department will investigate the complaint pursuant to the procedures outlined in the Wage Payment Act, [RCW 49.48.082 through 49.48.087](#). See [WAC 296-128-820](#).

3. Do service charges count towards the state minimum wage?

No. The employee portion of service charges is in addition to, and may not count towards, the employee's hourly minimum wage. A credit towards the minimum wage is not permitted. Employees must receive the full minimum wage.

Ordinances setting minimum wages above the state minimum wage, and the treatment of the employee portion of service charges under those ordinances, are subject to interpretation by the local authority. The department enforces ordinances as obligated wage payment requirements. See [RCW 49.48.082\(12\)](#) and [RCW 49.52.050\(2\)](#).

4. To which employees must an employer pay the employee portion of a service charge?

The employee portion of a service charge must be paid to employees who serve customers, excluding managerial or supervisory workers. This may include, but is not limited to, servers, bussers, banquet attendants, banquet captains, bartenders, barbacks, porters, and bellpersons. [RCW 49.46.160\(2\)\(a\)](#).

5. How can an employer disclose who receives a service charge?

Examples of appropriate disclosure statements:

Restaurant menu

- A service charge of ___% / \$___ will be added to your bill. ___% of this service charge is paid to the employee or employees who served you today.

OR

A service charge of ___% / \$___ will be added to your bill. 100% of this service charge is retained by [Business Name].

- A mandatory gratuity of ___% / \$___ will be added to your bill for parties of ___ or more. ___% of this service charge is paid to the employee or employees who served you today.

OR

A mandatory gratuity of ___% / \$___ will be added to your bill. 100% of this mandatory gratuity is retained by [Business Name].

Porterage agreement

- A porterage fee of \$___ is assessed per ___ for delivery of _____. ___% of this porterage fee is paid to the employee or employees who delivered your items.

OR

A porterage fee of \$___ is assessed per ___ for delivery of _____. 100% of this porterage fee is retained by [Business Name].

Receipt or invoice

- Service charge* \$___

* ___% of this service charge is paid to the employee or employees who served you today.

OR

* 100% of this service charge is retained by [Business Name].

- Delivery charge* \$___

* ___% of this delivery charge is paid to the employee or employees who delivered your items.

OR

* 100% of this delivery charge is retained by [Business Name].

Examples of unclear disclosure statements, where the entire service charge would be due to the employee or employees serving the customer:

Restaurant menu

- A service charge of ___% / \$___ will be added to your bill.
- A mandatory gratuity of ___% / \$___ will be added to your bill for parties of ___ or more.

Porterage agreement

- A porterage fee of \$___ is assessed per ___ for delivery of _____. This fee is shared by [Business Name] and its employees.

Receipt or invoice without adequate disclosure on a menu or equivalent

- Service charge* \$___
- Delivery charge* \$___

6. More favorable standards

If there are differences between any applicable federal, state, or local laws, rules, regulations, or ordinances governing automatic service charges, the standard more favorable or more protective to the employee is applied. See [RCW 49.46.120](#).

C. Recordkeeping

What records must employers keep of tips, gratuities, and the employee portion of a service charge?

The Minimum Wage Act requires employers to keep records of “the amount paid each pay period to each such employee”. [RCW 49.46.070](#). Amounts paid to an employee includes tips, gratuities, and the employee portion of service charges. In addition, the federal Internal Revenue Service provides [guidance](#) for employees and employers on required recordkeeping related to tips, gratuities, and service charges for federal tax purposes.

D. Payday

How soon after they are received must the employer pay tips, gratuities, and the employee portion of a service charge to their employees?

Tips and gratuities (or the share of tips and gratuities due to the employee from a pool), or the employee portion of a service charge received in cash, may be retained by the employee. If received by the employer (for instance, tips paid by credit card), the employer must pay tips, gratuities, and the employee portion of a service charge to the employee no later than wages earned in the same period are paid.

When paying tips to an employee, an employer may not require an employee to contribute more than the employee actually received in tips to a mandatory tip pool.

E. Deductions

What may employers deduct from tips, gratuities, and the employee portion of a service charge?

When tips, gratuities, and the employee portion of a service charge are charged to credit or debit cards, the employer may reduce the amount paid to the employee by up to a prorated percentage of the amount charged by the third party processor (i.e., transactional fee). However, the employer cannot reduce the amount paid to the employee by any amount greater than the prorated transactional fee. The employer may not deduct cash register shortages or other business expenses from tips, gratuities, or service charges paid to the employee.

The federal Internal Revenue Service provides [guidance](#) for employees and employers on required tax withholdings from tips, gratuities, and the employee portion of a service charge.

F. Paid sick leave

Must employers compensate employees for tips, gratuities, and service charges they would have received while using paid sick leave?

No. Normal hourly compensation for the purposes of paid sick leave does not include tips, gratuities, or service charges, unless the employer or a collective bargaining agreement require they be included. See [WAC 296-128-600](#).