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Labor and Employment Law

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New York Court of Appeals Resolves Questions About State's Tip-Sharing Statute

The New York Court of Appeals, in *Barenboim v. Starbucks Corp.*, recently clarified the types of employees who may participate in tip-pooling arrangements and the extent to which employers may exclude otherwise tip-eligible employees from participating in a tip pool under the New York Labor Law.

Background

Under Starbucks' tip policy, baristas and shift supervisors share tips collected each week. Two separate lawsuits were filed in federal court against Starbucks, challenging the policy as it applied to certain categories of employees. In one case, baristas, who take and deliver orders, stock product, and clean tables, alleged that shift managers could not lawfully participate in the tip pool because their supervisory duties rendered them ineligible for tips. In the other case, a group of assistant managers argued that because they perform some customer service-related duties and lack "full" managerial authority, Starbucks improperly excluded them from the tip pool. The U.S. District Court for the Southern District of New York ruled in favor of Starbucks in both cases, and the plaintiffs in both cases appealed.

Noting that the cases raised novel questions of state law, the U.S. Court of Appeals for the Second Circuit certified two questions to the New York Court of Appeals, the state's highest court:

1. What factors determine whether an employee is an "agent" of his employer for purposes of N.Y. Labor Law Section 196-d and, thus, ineligible to receive distributions from an employer-mandated tip pool?
2. Does New York Labor Law permit an employer to exclude an otherwise eligible tip-earning employee under Section 196-d from receiving distributions from an employer-mandated tip pool?



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The Court's Analysis of the Issues

Citing the New York State Department of Labor's January 2011 Hospitality Industry Wage Order, the Court held that employees are tip-eligible even if they have managerial responsibility as long as they provide personal service to customers as a principal part of their jobs, rather than just on an occasional or incidental basis. However, an employee who has "meaningful authority" or control over subordinates is ineligible to participate in a tip pool.

The Court explained that "meaningful authority might include the ability to discipline subordinates, assist in performance evaluations or participate in the process of hiring or terminating employees, as well as having input in the creation of employee work schedules, thereby directly influencing the number and timing of hours worked by staff as well as their compensation." The Court left it to the Second Circuit Court of Appeals to apply those principles to the specific facts of the baristas' case.

With respect to the second issue, the Court concluded that Section 196-d of the New York Labor Law does not create an affirmative right for all tip-eligible employees to participate in tip-sharing arrangements. Although the Court stated that "there may be an outer limit to an employer's ability to excise certain classifications of employees from a tip pool," the Court found no evidence to suggest that Starbucks' policy, as applied to assistant managers, reached that limit.

Impact on Employers

The Court's decision provides some clarity regarding employees' eligibility to participate in tip pools. However, because the Court did not apply the "meaningful authority" standard to the facts of the baristas' case, the analysis remains somewhat unclear. Additionally, the Court did not identify which exclusions of tip-eligible employees might be considered unlawful. Accordingly, employers should consult with counsel before implementing tip-sharing arrangements.

To learn more, contact Diane M. Pietraszewski at (716) 566-2853 or dpietraszewski@bsk.com.