

California Court of Appeal Reverses \$87 Million Award Against Starbucks In Tip-Pooling Class Action

by Michael Kun and Kathryn McGuigan

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In a stunning victory for Starbucks and the hospitality industry in general, a California Court of Appeal has reversed a \$87 million award in a tip-pooling class action brought on behalf of the company's baristas (the name given by Starbucks to its servers). In the decision, *Chau v. Starbucks Corporation*, No. D053491 (California Court of Appeal, District Four, Div. 1 June 2, 2009), the Court concluded that it was not unlawful to require that tips from a collective tip pool be shared with shift supervisors. The decision provides invaluable guidance to hospitality industry employers in California who have mandatory tip pools – and, barring a reversal by the Supreme Court, it may close the door to many tip-pooling class actions in the future.

Case Overview

California Labor Code § 351 prohibits supervisors from collecting, taking, or receiving any gratuity left for an employee by a patron. In *Chau*, the plaintiffs alleged that Starbucks violated § 351 when it required its baristas to share customer gratuities left in a collective tip pool with their shift supervisors.

After certifying a class of current and former baristas and conducting a bench trial, the trial court found plaintiffs had proved that the Starbucks tip-pooling policy violated California's Unfair Competition Law ("UCL"), and awarded the class \$87 million, plus interest.

Starbucks appealed, and the California Court of Appeal reversed the trial court, finding that Starbucks' tip-pooling policy does not violate § 351. In reaching its decision, the Court explained that Starbucks required that tips left by customers in a collective tip box were to be shared among baristas and shift supervisors, with each employee receiving his or her fair share of the tip proceeds. With this policy, Starbucks prevented the misappropriation of tips intended for a specific employee

and ensured the collective tips were equally distributed to those who earned them.

The Court also concluded that Starbucks' policy comported with the legislative intent of § 351. The Court noted that the legislature wanted to prohibit a business owner from deceiving a customer who left a tip for a specific employee by requiring that the employee later transfer any part of the tip to the employer or the employer's agent. In leaving money in the collective tip box, Starbucks' customers intended to collectively tip both the baristas and the shift supervisors for their work as a "team." Requiring these collective tips to be given solely to baristas would mislead the public.

The Court of Appeal reversed the trial court judgment against Starbucks and ordered the trial court to enter judgment in Starbucks' favor.

What This Means to Employers

This is a major victory for Starbucks and the California hospitality industry. It provides guidance to employers on how to establish tip-pooling policies that comply with the law. Moreover, unless the decision is overturned by the California Supreme Court, it may bring to a close at least one segment of the wage-hour class actions that have been epidemic in California for the past decade.

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