Tips And Tricks: Navigating The Law On Gratuities



Tips, otherwise known as gratuities, are not included in the definition of "wages" under the BC *Employment Standards Act* (the **Act**); however the Act still regulates tips in other ways.

In 2019, the Act was amended to include, among other changes, a definition of "gratuity", guidance on when an employer may withhold gratuities, and who is entitled to share in a tip pool. This blog post highlights key takeaways from recent developments in the case law following these amendments.

Key Takeaway #1: Beware of service fees that operate similar to gratuities.

The BC Employment Standards Tribunal has held on multiple occasions that service fees paid by customers may be gratuities. In *Ctour Holiday*, 2021 BCEST 73, part of a service fee paid to a tour guide was held to be a gratuity under the Act. Of the $10.00 service fee that each customer was required to pay, $5.50 was given to the employee. In *Star Limousine Service*, 2024 BCEST 67, the employer charged a 20% service fee on most fares. Instead of a tip pool, drivers were paid out a portion of the service fee for each individual trip on top of their wages. In both cases, the Tribunal found that the portions of the service fees that were historically paid to employees fell within one of the definitions of a gratuity: "a service charge imposed by the employer, in which a reasonable person would likely infer that it was intended to be redistributed to an employee".

Key Takeaway #2: Tip pools cannot be used for business costs.

Employers are not allowed to take money from a tip pool. In *Cioffi's Meat Market*, 2023 BCEST 10, the employer took money from the tip pool but argued that it had redistributed the tips to certain back of the house staff members through cash payments. However, there was no paper trail of such payments. The Tribunal held that the employer had improperly withheld gratuities and instead used the back of the house cut of the tip pool for business costs. The Tribunal ordered the employer to pay back the missing gratuities with interest and a penalty for a total of over $23,000.

Key Takeaway #3: Proper documentation matters.

Since the 2019 amendments to the Act, the case law is clear that improper classification of amounts paid to employees carries significant risks and costs. Employers operating in the service industry should ensure it keeps documentary evidence of gratuities and tip pools, to the extent possible, to ensure it can defend a complaint brought by an employee or ex-employee under the Act.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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