



## ADMINISTRATIVE POLICY

### STATE OF WASHINGTON DEPARTMENT OF LABOR AND INDUSTRIES EMPLOYMENT STANDARDS

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#### TITLE: TIP, GRATUITY, AND SERVICE CHARGE

##### EXAMPLES

NUMBER: ES.A.12.2

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

ISSUED: XX/XX/XX

SEE ALSO: ES.A.12.1  
ES.A.14

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#### 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 This document will remain in effect until rescinded, modified, or withdrawn by the Director or his or her designee.

This administrative policy provides examples of scenarios relating to tips, gratuities, and service charges, to help answer employee questions and to help employers comply with the Minimum Wage Act's requirements.

Tips and gratuities are amounts freely given by a customer to an employee, see [ES.A.12.1](#), "Tips, Gratuities, and Service Charges" for more information.

Employers must pay to an employee all tips and gratuities due to the employee, see RCW 49.46.020(3); [WAC 296-128-820](#).

Service charges are a type of automatic charge added to a customer's bill for services related to food, beverages, entertainment, or portorage, see [RCW 49.46.160](#). For instance, 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. Employers must pay to employees all service charges, unless the employer meets the disclosure requirements of RCW 49.46.160, which allow the employer to retain clearly-disclosed portions of the charge.

An employer must pay to its employees all tips, gratuities, and all employee portions of service charges, as defined under [RCW 49.46.160](#). Tips, gratuities, and service charges paid to an employee are in addition to, and may not count towards, the employee's hourly minimum wage.

#### 1. Tips and Wages.

**EXAMPLE 1-1: Employer is crediting tips towards the state minimum wage.** Richard works for a coffee shop as a barista earning state minimum wage plus tips and gratuities. The employer

is counting Richard's tips and gratuities towards the state minimum wage, so Richard never earns above the state minimum wage rate. When tips and gratuities paid to Richard are deducted from his pay, his average hourly rate falls below the state minimum wage.

The employer is in violation of RCW [49.46.020](#)(3). An employee must receive tips and gratuities in addition to the state minimum wage. See Administrative Policy [ES A.12.1](#).

**EXAMPLE 1-2: Employer withholds tips during training period.** Jessica works for a bar as a bartender for state minimum wage plus tips and gratuities. The employer tells Jessica that employees do not receive tips during their two-week training period. During the two-week training period, numerous customers leave tips for Jessica's service. When Jessica receives a paycheck, it reflects payment at the state minimum wage for all hours worked but does not include any tips and gratuities.

The employer is in violation of [RCW 49.46.020](#)(3). An employee must receive the state minimum wage plus tips and gratuities, including during a training period.

**EXAMPLE 1-3: Employee agreed to work at a wage of \$20 per hour plus tips.** Terrell works for a casino as a card room dealer. The hourly wage rate that the employer and Terrell agreed upon for the work is \$20 per hour plus any tips and gratuities Terrell receives. Later, the employer begins counting tips and gratuities towards Terrell's earnings from wages to meet the agreed rate of \$20 per hour.

The employer is in violation of [RCW 49.46.020](#)(3). Terrell should have received the agreed wage rate of \$20 per hour for all hours worked, plus all tips and gratuities.

**EXAMPLE 1-4: Employee is subject to a municipal minimum wage and receives tips.** Kiesha works for a cafe in SeaTac as a server. SeaTac has a minimum wage in excess of what the state requires and prohibits the crediting of tips towards the SeaTac minimum wage. The SeaTac minimum wage ordinance applies to Kiesha. Kiesha discovers that her employer is counting tips and gratuities towards her earnings to meet the SeaTac minimum wage. The wage rate when tips and gratuities paid to Kiesha are deducted falls below the SeaTac minimum wage.

The employer is in violation of [RCW 49.46.020](#)(3). Kiesha did not receive the wage rate required by the local ordinance for all hours worked, plus tips and gratuities.

**EXAMPLE 1-5: Exempt employee accepts a tip directly from a customer.** Angie works for a restaurant as a server. She sees her manager, an exempt employee under the Minimum Wage Act, serve a customer's table and then accept a cash tip directly from the customer. The business does not have a tip pool.

The employer is not in violation of [RCW 49.46.020](#)(3). Employers, managers, or supervisors may accept tips only for services they directly provide.

## 2. Tip Pooling.

**EXAMPLE 2-1: Joint employer doesn't pay to all contributors.** A group of employees of a staffing agency, who are considered temporary, are hired to cashier alongside permanent employees at a concert venue. The venue employer and the staffing agency employer are considered "joint employers". The venue employer requires both the permanent employees and the staffing agency's temporary employees to contribute all earned tips to a tip pool. However, only the permanent employees are paid out from the tip pool.

The employers are in violation of [RCW 49.46.020](#)(3). Generally, similarly-situated employees serving customers in the same way are expected to be treated the same in a joint-employer scenario, thus the temporary employees must also receive tips from the tip pool. An employee may have more than one employer under the Minimum Wage Act as outlined in [ES.A.14](#), “Minimum Wage Act- Employment Relationships”. If an employee works for joint employers, all of the employee’s work is considered as one employment for purposes of the Minimum Wage Act. As a result, all employers are responsible both individually and jointly for compliance with all of the applicable provisions of the Minimum Wage Act.

**EXAMPLE 2-2: Employer requires a tip pool.** Marty works for a restaurant as a food runner. The employer has a tip pooling policy requiring Marty to submit tips to a tip pool from which tips are divided amongst all wait staff, as well as kitchen and janitorial staff. All staff who receive tips meet the definition of “employee” under RCW 49.46.010. Marty gets his share of the agreed tip pool.

The employer is not in violation of [RCW 49.46.020](#)(3). The employer is complying with the requirement to pay all tips and gratuities to employees included in the tip pool.

**EXAMPLE 2-3: Manager takes a share of a tip pool.** Amy works for a café as a server. The employer requires Amy to submit tips to a tip pool in which tips are divided amongst all wait staff, kitchen staff, and the manager of the café. The manager of the café serves tables and meets the definition of an “executive” employee under the Minimum Wage Act.

The employer is in violation of [RCW 49.46.020](#)(3) because the café manager is an ineligible member of the tip pool. The department would enforce that Amy is paid a percentage of the tips that were paid to the café manager, based on Amy’s normal percentage received from the tip pool. For more information on “executive” employees, see [“ES.A.9.3, Exemption from Minimum Wage Act requirements for Executive Employees”](#) and [RCW 49.46.010](#)(3).

### 3. Service Charges.

**EXAMPLE 3-1: Employer is crediting service charges itemized as payable to employees towards the state minimum wage.** John works for a pizza parlor as a delivery driver for state minimum wage plus service charges. The employer discloses on the receipt and menu that 100% of the service charge is paid to employees. The employer is counting service charges towards John’s earnings from wages. The wage rate when the service charges paid to John are deducted is below the state minimum wage.

The employer is in violation of [RCW 49.46.160](#). An employee must receive the state minimum wage plus the employee portion of service charges.

**EXAMPLE 3-2: Employer withholds service charges during training period.** Cherice works for a caterer as a banquet attendant for state minimum wage plus service charges. The employer discloses on the receipt and menu that 100% of the service charge is paid to employees. The employer tells Cherice that employees do not receive service charges until they complete a training period. Cherice’s paycheck reflects payment at the state minimum wage for all hours worked but does not include any service charges.

The employer is in violation of [RCW 49.46.160](#). An employee must receive the state minimum wage plus the employee portion of service charges, including during a training period.

**EXAMPLE 3-3: Employer discloses that a service charge is retained by the employer. The employer uses the revenue from the service charge to pay wages.** Paxton works for a steak house as a bartender. The establishment imposes a service charge of 20% on all orders. The

employer discloses on receipts and menus that 100% of the service charge is retained by the business. The employer retains the income from the service charge and uses it to pay wages for its employees, as well as for other business expenses.

The employer is not in violation of [RCW 49.46.160](#). The employer may retain the service charge as long as the percentage retained is clearly disclosed on the receipt and any menu provided to customers.

**EXAMPLE 3-4: Employer does not adequately disclose who receives a service charge, and retains the service charge as income.** Ariel works for sandwich shop as a delivery driver. The establishment imposes a service charge of 20% on all delivery orders. The employer lists the service charge on the receipt as a “Delivery charge.” The employer retains the revenue from the service charge and uses it to refuel and maintain the delivery vehicles.

The employer is in violation of [RCW 49.46.160](#). The employer did not disclose on the receipt and any menu provided to the customer that any portion of the service charge is retained by the employer. The employer must pay the delivery charge to the employee or employees serving the customer. Ariel should receive the full amount of the delivery charge for all orders she delivered.

**EXAMPLE 3-5: Employee agreed to work at a wage rate of \$20 per hour plus service charges itemized as payable to the employee.** Thad works for a tap room as a server. The establishment imposes a service charge of 20% on all orders. The hourly wage rate that the employer and Thad agreed upon for the work is \$20 per hour plus service charges for all the tables Thad serves. The employer discloses on the receipt and any menu provided to customers that 100% of the service charge is paid to employees. The employer begins counting service charges towards Thad’s earnings from wages to meet the agreed rate of \$20 per hour.

The employer is in violation of [RCW 49.46.160](#). Thad did not receive the agreed wage rate of \$20 per hour for all hours worked, plus service charges.

**EXAMPLE 3-6: Employee is subject to a municipal minimum wage and receives service charges itemized as payable to the employee.** Eleanor works for a catering company in Seatac as a banquet server. The employer imposes a service charge of 20% on all orders. The employer discloses on the receipt and menu that 100% of the service charge is paid to employees. Seatac has adopted a minimum wage in excess of what the state requires, and the ordinance prohibits crediting of service charges towards the Seatac minimum wage. The Seatac minimum wage ordinance applies to Eleanor. Eleanor discovers that her employer is counting service charges towards her earnings to meet the Seatac minimum wage. The wage rate when service charges paid to Eleanor are deducted falls below the Seatac minimum wage.

The employer is in violation of [RCW 49.46.160](#). The department would enforce the wage rate required by local ordinance plus the employee portion of service charges.

**EXAMPLE 3-7: Employee is subject to a municipal state minimum wage that allows crediting of service charges and receives service charges itemized as payable to the employee.** David works for a hotel in Seattle as a porter. The employer imposes a service charge of \$5 per person on all guests checking into the hotel. The employer discloses on the room receipt that 100% of the service charges are paid to employees. Seattle has adopted a minimum wage in excess of what the state requires. The Seattle ordinance permits businesses to credit service charges towards the Seattle minimum wage. David discovers that his employer is paying the state minimum wage, but counting service charges towards his earnings to meet the Seattle minimum wage. The wage rate when service charges paid to David are deducted falls below the Seattle minimum wage, but above the state minimum wage.

The department would enforce the wage rate required by Seattle local ordinance. Because the local ordinance allows crediting of service charges above the state minimum wage, the employer is not in violation of [RCW 49.46.020\(3\)](#).

#### 4. Paydays

**EXAMPLE 4-1: Employer pays out tips at the end of the night.** Rigoberto works for a teppanyaki grill as a server. The employer requires employees to report tips and gratuities received in cash, but allows employees to retain the tips and gratuities in cash at the end of the night. The employer also pays out each employee's share of tips and gratuities received via credit card at the end of their shift.

The employer is in compliance with the requirement to pay tips and gratuities to employees no later than wages earned in the same period are paid. See [RCW 49.48.010](#).

**EXAMPLE 4-2: Employer pays tips and service charges on the employee's regular payday for wages earned in the same period.** Cristina works for a brunch café as a server. The establishment imposes a service charge of 20% on all orders. The employer discloses on the receipt and any menu provided to customers that 100% of the service charge is paid to employees. The service charge is typically paid by credit card. The employer holds the credit card receipts and pays all service charges due to Cristina on her paycheck on the same day that her wages from the same period are paid.

The employer is in compliance with the requirement to pay tips, gratuities, and service charges to employees no later than wages earned in the same period are paid. See [RCW 49.48.010](#).

#### 5. Deductions

**EXAMPLE 5-1: Employer deducts tax withholdings from tips as required by the Internal Revenue Service.** Ian works as a server. His employer requires its employees to report tips and gratuities received in cash, but allows employees to retain the tips and gratuities in cash at the end of the night. In order to properly withhold taxes as required by the Internal Revenue Service, the employer adds the tips and gratuities received by Ian onto his paycheck, and then reflects the same amount as a deduction to show that the amount was previously paid.

The employer is in compliance with deduction requirements as long as only required tax withholdings are deducted from the employee's pay. See [ES.A.12.1](#), "Tips, Gratuities, and Service Charges" for more information.

**EXAMPLE 5-2: Employer deducts entire credit card transaction charge from tips.** Priya works for a bagel shop as a barista. The employer allows customers to leave tips on credit cards. The credit card processing company charges a fixed fee of \$1 per transaction. A customer leaves a \$20 tip on an \$80 order. The credit card processing company charges \$1 to process the entire \$100 order. The employer pays Priya \$19 of the \$20 tip.

The employer is in violation of [RCW 49.46.020\(3\)](#). The employer cannot reduce the amount paid to the employee by any amount greater than the prorated transaction fee. Deducting the entire transaction fee from the employee's tip is prohibited.

**EXAMPLE 5-3: Employer deducts credit card processing fee on a prorated basis.** Akeno works as a bartender. The employer allows customers to leave tips on credit cards. The credit card processing company charges a prorated fee of 1% on all amounts processed by credit card. A



customer leaves a \$20 tip on a \$100 order. The credit card processing company charges \$1.20 to process the entire order. The prorated portion of the credit card processing fee that corresponds to Akeno's tip is \$0.20. The employer pays the employee \$19.80 of the \$20 tip.

The employer is not in violation of [RCW 49.46.020\(3\)](#). The employer is in compliance with deduction requirements because they deducted only a prorated portion of the credit card processing fee.

**EXAMPLE 5-4: Employer deducts cash register shortages from tips.** Allen works as a bartender. When a customer does not pay their bill, the employer deducts the amount of the cash register shortage from the amount of tips and gratuities paid to Allen.

The employer is in violation of [RCW 49.46.020\(3\)](#). An employer must pay all tips and gratuities to its employees. The employer may not deduct cash register shortages or other business expenses from tips, gratuities, or service charges earned by the employee.