

State of Connecticut
Regulation of
Department of Labor
Concerning
Tip Credit

Section One. Section 31-60-2 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 31-60-2. Gratuities as part of the minimum fair wage

For the purposes of this regulation, “gratuity” means a voluntary monetary contribution received by the employee from a guest, patron or customer for service rendered.

(a) Unless otherwise prohibited by statutory provision or by a wage order gratuities may be recognized as constituting a part of the minimum fair wage when all of the following provisions are complied with: (1) The employee shall be engaged in an employment in which gratuities have customarily and usually constituted and have been recognized as part of his remuneration for hiring purposes and (2) the amount received in gratuities claimed as credit for part of the minimum fair wage shall be recorded on a daily, weekly, or bi-weekly basis [as a separate item] in [the] a wage record, even though payment is made more frequently and (3) each employer claiming credit for gratuities as part of the minimum fair wage paid to any employee shall provide substantial evidence that not less than the amount claimed, which shall not exceed the allowance hereinafter provided, was received by the employee. For example, an attestation or statement in electronic or written format [a statement signed by the employee] demonstrating that wages received by the service employee, including gratuities [not to exceed the amount specified herein], together with other authorized allowances, represents a payment of not less than the minimum fair wage established by subsection (j) of section 31-58 of the Connecticut General Statutes per hour for each hour worked during the pay period, will be accepted by the commissioner as substantial evidence for purposes of this section, provided all other requirements of this and other applicable regulations shall be complied with. To clarify, such attestation, statement, or substantial evidence will satisfy subdivisions (2) and (3) of this subsection.

[(b) Allowance for gratuities as part of the minimum fair wage shall not exceed twenty-three percent of the minimum fair wage established by subsection (j) of section 31-58 of the Connecticut General Statutes per hour for hotel industries or not more than thirty-five cents per hour for employees in any other industry in which it can be established that gratuities have, prior to July 1, 1967, customarily and usually constituted and been recognized as part of the employee’s remuneration for hiring purposes for that particular employment. Gratuities received in excess of the amount specified herein as allowable need not be reported or recorded for the purposes of this regulation. The wage paid to each employee shall be at least the minimum fair wage established by subsection (j) of section 31-58 of the Connecticut General Statutes per hour for each hour worked, which may include gratuities not to exceed the limitation herein set forth, provided all conditions herein set forth shall be met.]

Sec. 2. Section 31-62-E2 of the Regulations of Connecticut State Agencies is amended to read as

follows:

Sec. 31-62-E2. Definitions

As used in sections 31-62-E1 to 31-62-E15, inclusive:

(a) “Restaurant occupation” includes all persons engaged in the preparation and serving of food for human consumption, or in any operation incidental or supplemental thereto irrespective of whether the food is served at or away from the point of preparation, and irrespective of whether the preparation and serving of food is the sole business of the employing establishment or enterprise, with the exception that this definition shall not include the preparation and serving of food in a nonprofit educational, charitable or religious organization where the food service is not regularly available to the general public, or the preparation and serving of food in hospitals, convalescent homes or homes for the elderly where the food service is not regularly available to the general public and is incidental to the care of the patient.

This occupation includes but is not limited to employees of restaurants, cafeterias, that portion of hotel business involving the preparation and serving of food, commissaries, dairy bars, grills, coffee shops, luncheonettes, sandwich shops, tearooms, nightclubs, cabarets, automats, caterers, frankfurter stands, operators of food vending machines, and that portion of the business involving the serving of food in department and variety stores, drugstores, candy stores, bakeries, pizzerias, delicatessens, places of amusement and recreation, commercial and industrial establishments and social, recreational, fraternal and professional clubs which either regularly or intermittently serve food, as well as other establishments or businesses meeting the condition stated in this paragraph.

(b) “Restaurant employee” means any person who is employed or permitted to work in any restaurant occupation, establishment or enterprise.

~~[(e)]~~(c) “Service employee” means any employee whose duties relate solely to the serving of food and/or beverages to patrons seated at tables or booths, and to the performance of duties incidental to such service, and who customarily receives gratuities. [For the purpose of this order, a person shall not be considered to customarily receive gratuities unless a minimum of ten dollars per week in gratuities is received in the case of full-time employees, or two dollars per day in the case of part-time employees, as evidenced by signed statements of the employee, stating unequivocally that such worker did receive gratuities as herein required, which must be maintained as part of the records of the employer.]

(d) “Duties incidental to such service” means, for purpose of subsection (c) of this section, performance of the following tasks:

- (1) Take orders from patrons for food or beverages;
- (2) Check with customers to ensure that they are enjoying their meals and take action to correct any problems;
- (3) Check patrons’ identification to ensure that they met minimum age requirements for consumption of alcoholic beverages;
- (4) Collect payments from customers;
- (5) Write patrons’ food orders on order slips, memorize orders, or enter orders into computers for transmittal to kitchen staff;
- (6) Prepare checks that itemize and total meal costs and sales taxes;
- (7) Present menus to patrons and answer questions about menu items, making recommendations upon request;
- (8) Remove dishes and glasses from tables or counters and take them to kitchen for cleaning;
- (9) Serve food or beverages to patrons, and prepare or serve specialty dishes at tables as required;
- (10) Clean tables or counters after patrons have finished dining;
- (11) Prepare tables for meals, including setting up items such as linens, silverware, and glassware;

- (12) Explain how various menu items are prepared, describing ingredients and cooking methods;
- (13) Escort customers to their tables;
- (14) Clean tables and floors in service employee's immediate service area before, during, or after serving patrons;
- (15) Cleaning and tidying up server station and drink station;
- (16) Inform customers of daily specials;
- (17) Prepare hot, cold, and mixed drinks for patrons, including brewing coffee, and chill bottles of wine;
- (18) Roll silverware, set up food stations, or set up dining areas to prepare for the next shift or for large parties;
- (19) Stock service areas with supplies such as coffee, food, tableware, and linens;
- (20) Bring wine selections to tables with appropriate glasses, and pour the wines for customers;
- (21) Fill salt, pepper, sugar, cream, condiment, and napkin containers;
- (22) Describe and recommend wines to customers; and
- (23) Garnish and decorate dishes in preparation for serving.

[(d)](e) “Non-service employee” means an employee other than a service employee, as herein defined. A non-service employee includes, but is not limited to, countermaids, counterwaitresses, countermen, counterwaiters and those employees serving food or beverage to patrons at tables or booths and who do not customarily receive gratuities as defined above.

[(e)](f) “Gratuities” means a voluntary monetary contribution received by the employee directly from a guest, patron or customer for service rendered.

Sec. 3. The Regulations of Connecticut State Agencies are amended by adding section 31-62-E2a as follows:

(NEW) Sec. 31-62-E2a. Service Employees

A service employee shall not be deemed to have performed service duties while an establishment is not open to patrons, shall not claim a credit for gratuities for the time a service employee works when an establishment is not open to patrons, and shall not include any portion of such time as part of the calculation of non-service duties when applying the “80/20” rule set forth in these regulations.

Sec. 4. Section 31-62-E3 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 31-62-E3. Gratuities as part of the minimum fair wage

Gratuities shall be recognized as constituting a part of the minimum fair wage when all of the following provisions are complied with:

- (a) The employer shall be engaged in an employment in which gratuities have customarily and usually constituted and have been recognized as part of his remuneration for hiring purposes, and
- (b) the amount received in gratuities claimed as credit for part of the minimum fair wage shall be recorded on a daily, weekly, or bi-weekly basis [as a separate item] in [the] a wage record even though the payment is made more frequently, and
- (c) each employer claiming credit for gratuities as part of the minimum fair wage paid to any service employee shall obtain substantial evidence as described in Section 31-60-2 of the Regulations of Connecticut State Agencies, such as a daily, weekly, or bi-weekly [an] attestation or statement in electronic or written format [a statement signed by the employee attesting] demonstrating that [he]

the service employee has received in gratuities not less than the amount claimed as credit for part of the minimum fair wage. Such attestation or statement shall contain the week ending date of the payroll week for which credit is claimed. [Gratuities received in excess of twenty-three percent of the minimum fair wage established by subsection (j) of section 31-58 of the Connecticut General Statutes per hour, need not be reported or recorded for the purpose of this regulation.] Such attestation or statement may include documentation via an electronic point of service system or any other method that verifies the amount a service employee has received in gratuities for the pay period in question. To clarify, such attestation, statement or substantial evidence will satisfy subsections (b) and (c) of this section.

Sec. 5. The Regulations of Connecticut State Agencies are amended by adding section 31-62-E3a as follows:

(NEW) Sec. 31-62-E3a. Service and non-service duties within the restaurant industry

On any day that a service employee performs non-service employee duties

(a) For two hours or more, or

(b) For more than 20 percent of the service employee's shift, whichever is less, the employer shall not claim credit for gratuities as part of the minimum fair wage for that day.

If a service employee performs non-service duties during the course of a day's work in excess of the lesser of subsections (a) or (b) of this section, an employer must segregate and record time spent on non-service duties to claim a credit for gratuities as part of the minimum fair wage for that day.

Sec. 6. Section 31-62-E4 of the Regulations of Connecticut State Agencies is repealed.

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Statement of Purpose

The purpose of these proposed regulations is to implement section 5 of Public Act No. 19-1 concerning employees who perform both service and nonservice duties and allowances for gratuities permitted or applied as part of the minimum fair wage pursuant to section 31-60 of the Connecticut General Statutes.