TIP AND GRATUITY LAWS IN CALIFORNIA

Under California law, tips and gratuities belong to the employee, and this article explains that rule, its exceptions, and how workers can enforce it.

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In California, tips and gratuities are the sole property of the employee or employees they are left for.[1] Employers and their agents may not take any part of these gratuities, deduct them from the employee's wages, or count them toward the minimum wage.[2]

There are, however, some important caveats to this rule. This article takes a closer look at those caveats and explains California law as it relates to employee tips and gratuities.

CH. 01

Governing Law

In the context of tips and gratuities, California employees are protected by two main sets of laws:

- The federal Fair Labor Standards Act,[3] and
- California's Labor Code. Specifically, Labor Code sections 350 through 356.

In some cases, there may also be laws governing tips and gratuities on the local level, adopted by counties or cities.[4]

Although the laws regulating tips and gratuities may overlap with each other, an employer must follow the law most favorable to the employee.[5]

The California Labor Code was enacted to protect employees and promote worker-positive public policy.[6]

These protections apply to *employees*. Workers who are properly classified as independent contractors are not covered by the Labor Code's tip protections. That includes app-based rideshare and delivery drivers, whom California voters classified as independent contractors under Proposition 22, although Proposition 22 separately requires those companies to pass the full amount of any tip on to the driver.[7]

CH. 02

What Is Considered a Tip or Gratuity?

Under the California Labor Code, a gratuity is defined as money left for an employee by a customer above the actual amount due for the underlying good or service.[8] Generally, a tip is left by a patron as a reward for good service and the amount is not regulated by the employer.

In general, tips and gratuities have four defining characteristics:

- They are given voluntarily by the customer,
- The customer has an unrestricted right to select the amount they wish to give,
- The payment is not negotiable or dictated by employer policy, and
- The customer has the right to determine who receives the tip or gratuity.[9]

2.1 Tips Are Not a "Wage"

Under California law, tips are not technically a "wage" paid by the employer.[10] For tax purposes, however, most types of tips are considered taxable income, much like regular wages.[11] A temporary federal deduction allows many tipped workers to avoid federal income tax on a portion of their tips for tax years 2025 through 2028, but tips must still be reported and remain subject to Social Security and Medicare taxes.[12]

California's treatment of tips and gratuities as non-wage payments is significant because, when California law requires an employer to pay overtime, the usual overtime rate is calculated based on the employee's *regular rate of pay*.[13]

Because tips and gratuities are not a wage, and instead are left voluntarily at the discretion of the customer, they are not included when employers calculate the employee's regular rate of pay for overtime purposes.

2.2 Mandatory Service Charges Are Usually Not Tips

A mandatory service charge, which is added automatically to a customer's bill, is generally not a tip under the law.[14] In general, these service charges legally belong to the employer, who may then distribute them to employees or keep them.[15]

> EXAMPLE
>
> A restaurant's menu states that an 18% gratuity will be added to the bill for parties of eight or more. When a party of ten dines, the restaurant automatically adds the charge.
>
> Because the customer has no choice about paying it, the automatic charge is a mandatory service charge rather than a tip, even though the menu calls it a "gratuity."[16] Unless a local ordinance or the circumstances discussed below require otherwise, it belongs to the restaurant.

This rule is not absolute, however. A California appellate court has held that there is no categorical rule preventing a payment labeled a "service charge" from qualifying as a gratuity under Labor Code section 351. Whether it does depends on the circumstances, including whether customers would reasonably understand the charge to be a payment intended for the employees who served them.[17] In that case, a banquet hall automatically added a 21% "service charge" to every banquet bill; the court allowed the servers to pursue their claim that the charge was really a gratuity belonging to them.

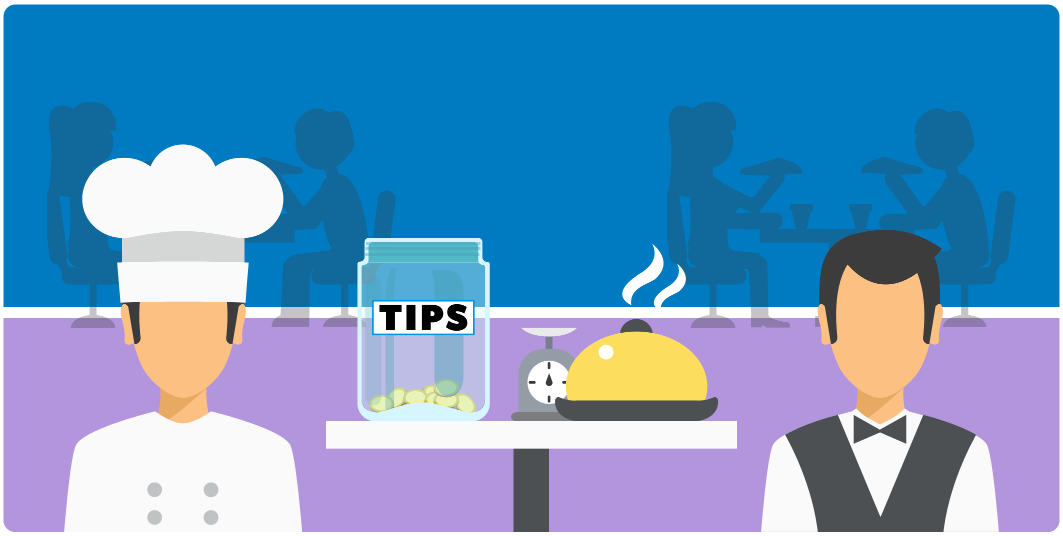
It is worth noting, also, that some local ordinances in California require service charges to be paid in full to the employees who performed the services.[18]

When a mandatory service charge is not a gratuity, it is treated differently from tips in several ways. First, service charges have different tax consequences and presumptions, even if they are later given to the employees.[19] Second, service charges can be counted toward minimum wage payments and the calculation of overtime wages.[20]

It is possible for an employee to receive money from a service charge, as distributed by an employer, and to receive normal tips as well. This situation is referred to as “double tipping” and it is legal in California.[21]

CH. 03

Important Rules for Tips in California



3.1 When Tips Must Be Paid

In general, cash tips are payable to the employee immediately when they are received, without interference from the employer.[22]

If, however, the customer pays the tip by credit card, the tip must be paid to the employee, in full, on the next regular payday after the credit card payment was authorized.[23]

3.2 Credit Card Charges Are the Employer's Responsibility

In some states, employers are permitted to subtract a proportionate amount of the tip to cover the employee's share of the credit card processing fee. But under California law, an employer *cannot* deduct any credit card processing fees from a tip left to an employee through a patron's credit card.[24]

Therefore, the *full* tip left by the customer must be given to the employee and the employer must pay the full cost of the processing fee.

3.3 Tips Cannot Be Used to Cover Business Losses

An employer also cannot use an employee's tips to cover the costs of running the business. Requiring servers to pay for customer walkouts, broken dishes, or cash register shortages out of their tips is a form of taking the gratuity, which the Labor Code prohibits.[25]

California treats these kinds of losses as ordinary expenses that the business must bear. Even deductions from an employee's *wages* for cash shortages, breakage, or lost equipment are unlawful unless the employer can show the loss was caused by the employee's dishonest or willful act, or by the employee's gross negligence.[26]

3.4 Tip Pooling Is Generally Legal

Tip pooling is the practice of gathering some or all of the tips earned by several employees, and then splitting them up in previously agreed percentages. In California, employer-mandated tip pooling is generally considered legal, as long as certain conditions are met.[27] Those conditions are as follows:

- The people participating in the pool are employees;[28]
- The tips included in the pool were given to employees;[29] and
- The employer, the owner, the managers, and the supervisors do not share in the tip pool.[30]

> EXAMPLE
>
> A restaurant requires all servers to contribute 10% of their tips to the restaurant's floor manager. The floor manager has the power to hire and fire servers, without needing additional authorization from the restaurant's owners.
>
> This arrangement would be unlawful because the floor manager serves as an “agent” of the employer. The floor manager may *not* share in the servers' tips.[31]

Although this test generally excludes supervisors from sharing in the tip pool, at least one court has held that supervisors can join in the tip pool if they spend large portions of their time doing the same work as regular employees and the tips were likely left, in part, for them.[32] The Labor Commissioner's Office, however, takes the stricter position that a tip pool may not be used to compensate owners, managers, or supervisors even when they provide direct table service to customers.[33]

Additionally, although there is no definitive law on this issue, there is a strong argument that the tip pooling arrangement must involve a fair and reasonable distribution of the tips.[34] A *fair and reasonable distribution* of tips will usually be found where an employer has an impartial system for deciding how much is paid to each employee.

In general, tip pools will include employees who customarily receive tips and are in the chain of service, such as servers, bussers, and bartenders. But tip pooling arrangements are not necessarily limited to those who provide services directly to the customer.[35]

RELATED GUIDE

Tip Pooling Law in California

A closer look at when tip pools are legal, who can share in them, and how pooled tips must be divided.

3.5 Minimum Wage: No Tip Credits Allowed

In California, employees are entitled to be paid at least the minimum wage. As of January 1, 2026, California requires nonexempt employees to be paid a minimum wage of $16.90 per hour, regardless of the employer's size.[36] Some workers are entitled to even more: covered fast food restaurant employees and many health care workers have higher industry-specific minimum wages, and a number of cities and counties have adopted higher local rates.[37]

In some states, and under federal law, employers are allowed to credit tips toward the employee's minimum wage.[38] This is called a “tip credit,” and it essentially allows employers to pay their workers less than the minimum wage if, when the employee's tips are considered, the employee's income meets minimum wage requirements.[39]

Even under federal law, however, employers, managers, and supervisors may never keep any portion of an employee's tips for themselves, whether or not a tip credit is taken.[40]

California law, which provides stricter protections for the employee, expressly forbids tip credits.[41] Thus, tip credits are unlawful in California, and any employment agreement that purports to allow them is void.[42] The employer must pay the full applicable minimum wage in addition to any tips the employee receives.

CH. 04

The Employer's Record-Keeping Duties

Every employer is required to keep accurate records of all tips received, either directly or indirectly.[43] This means that employers must keep records of tips paid by credit card or check, and accurately distribute them to employees.

These records must be made available for inspection by California's Labor Commissioner's Office.[44] This requirement can help employees prove wrongdoing on the part of their employer in the event of a dispute.

CH. 05

Legal Consequences for Violations

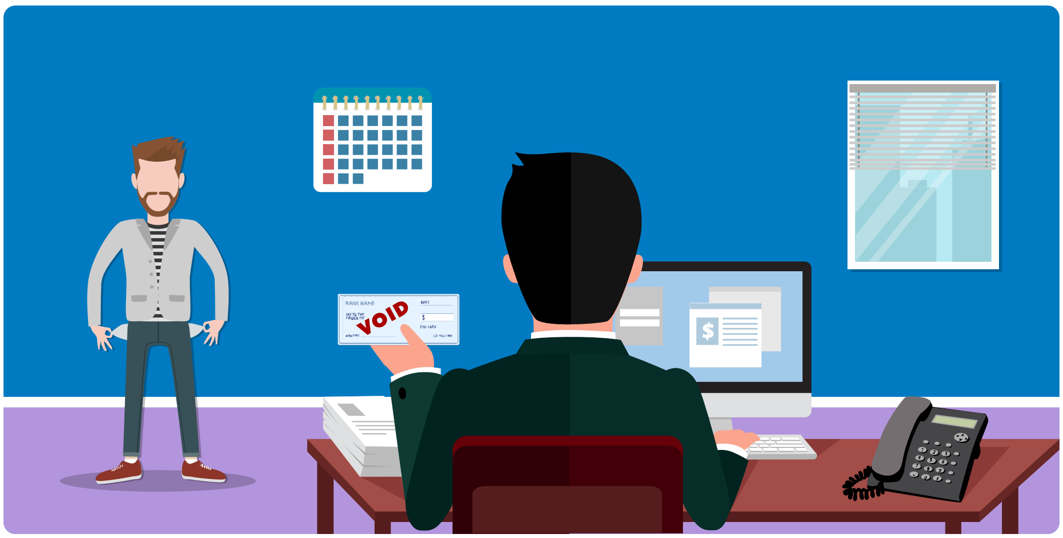
Any employer who violates the tip and gratuity laws of California is guilty of a misdemeanor and may be fined up to $1,000, imprisoned for up to 60 days, or both.[45]

These penalties are in addition to any money the employer may owe to the employee.

Beginning January 1, 2026, the Labor Commissioner may also investigate a violation and either issue a citation against the employer or file a civil action to recover gratuities that were unlawfully taken or withheld.[46] Citations follow the same procedures that apply to citations for minimum wage violations.[47]

CH. 06

The Employee's Remedies for Violations



As mentioned above, Labor Code section 351 provides that tips and gratuities are the sole property of the employee or employees to whom they are given. At first glance, this would seem to permit employees to file a lawsuit against their employers for violating their tip rights.

In 2010, however, the California Supreme Court held that employees do *not* have a private cause of action to recover tips from their employer.[48] This means that employees cannot file a lawsuit under Labor Code section 351 itself to recover misappropriated tips or gratuities. Only California's Department of Industrial Relations has authority to directly enforce this portion of the Labor Code.[49]

Nevertheless, employees still have some options to recover money from their employers. Several of those options are as follows:

- **Labor Commissioner Complaint.** An employee can file a wage claim with California's Division of Labor Standards Enforcement (the Labor Commissioner's Office) so that an investigation can take place, and damages can be pursued by the Labor Commissioner. Since January 1, 2026, the Labor Commissioner also has express authority to issue a citation, or file a civil action, against an employer that unlawfully takes or withholds gratuities.[50]

- **Conversion Lawsuit.** "Conversion" is a type of lawsuit that alleges someone interfered with another person's property rights.[51] If an employee's tips are wrongfully withheld, they can file a lawsuit alleging conversion.[52]
- **Unfair Business Practices Lawsuit.** California's Unfair Competition Law (the "UCL") prohibits unlawful, unfair, or fraudulent business practices.[53] Any person who has lost money as a result of those acts can file a lawsuit under the UCL.[54] California courts have held that this permits employees to file lawsuits against employers who violate the Labor Code.[55]
- **PAGA Claim.** California's Labor Code authorizes employees to file lawsuits against their employers to recover civil penalties on behalf of the state. This statute is called the Private Attorneys General Act, and lawsuits brought under it are commonly referred to as "PAGA claims." Tip and record-keeping violations are among the Labor Code violations that can support a PAGA claim.[56] Importantly, several steps need to be followed before an employee is authorized to bring a PAGA claim, and, for claims filed on or after June 19, 2024, the employee must have personally suffered each of the violations alleged.[57]
- **Federal Lawsuit.** Federal law separately prohibits employers, including managers and supervisors, from keeping any portion of an employee's tips for any purpose.[58] Unlike Labor Code section 351, this federal rule can be enforced through a private lawsuit: an employee can sue in state or federal court to recover the tips the employer kept, plus an equal amount as liquidated damages, along with attorney's fees and costs.[59]

RELATED GUIDE

How to File a Wage & Hour Complaint in California

A step-by-step guide to filing a claim with the Labor Commissioner's Office.

6.1 Retaliation Is Prohibited

Employees who do not receive their tips or gratuities as required by law have a right to bring the issue to their employer's attention and request full compliance with their tip and gratuity rights. Employers are legally prohibited from retaliating against employees who assert these rights.[60]

Employees are also protected from retaliation if they file a complaint with a governmental agency or a lawsuit in court alleging a violation of their tip rights.[61] This means that an employee cannot be punished, fired, or treated unfairly for exercising these rights. If the employer takes adverse action within 90 days of the employee's protected activity, the law presumes the action was retaliatory, and the employer must rebut that presumption.[62] Employees who face retaliation may be entitled to reinstatement, reimbursement of lost wages and benefits, and a civil penalty of up to $10,000 per employee for each violation, payable to the employee.[63] To enforce these protections, the employee can file a retaliation complaint with the Labor Commissioner's Office or file a lawsuit in court; the employee is not required to go through the Labor Commissioner before suing.[64]

6.2 Deadline to File

In many cases, it is important to act fast because claims based on tip and gratuity violations can expire. This expiration period is called a *statute of limitations*. The applicable statute of limitations will depend on the type of claim the employee pursues.

- **Contract Claims.** If the employee is alleging a violation of an oral agreement with their employer, the statute of limitations is *two years* from the date of the violation.[65] If the employee is alleging a violation of a written agreement with their employer, the statute of limitations is *four years* from the date of the violation.[66]
- **Conversion Claims.** A lawsuit for conversion (mentioned above) must be filed within *three years* of the violation.[67]
- **Unfair Business Practices Claims.** If an employee is alleging a violation of California's Unfair Competition Law (also mentioned above), the statute of limitations is *four years* from the date of the violation.[68]
- **PAGA Claims.** If the employee is pursuing a claim under the Private Attorneys General Act (a “PAGA claim”), it must be filed within *one year* of the violation, although the deadline is paused while the employee's required pre-filing notice to the state is pending.[69]
- **Federal Claims.** A lawsuit under the federal Fair Labor Standards Act must be filed within *two years* of the violation, or *three years* if the violation was willful.[70]

Retaliation Complaints. A retaliation complaint filed with the Labor Commissioner's Office must be filed within *one year* of the retaliatory act, although the deadline can be extended for good cause.[71]

References

1 Labor Code, § 351, subd. (a) [“No employer or agent shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct any amount from wages due an employee on account of a gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer. Every gratuity is hereby declared to be the sole property of the employee or employees to whom it was paid, given, or left for. An employer that permits patrons to pay gratuities by credit card shall pay the employees the full amount of the gratuity that the patron indicated on the credit card slip, without any deductions for any credit card payment processing fees or costs that may be charged to the employer by the credit card company. Payment of gratuities made by patrons using credit cards shall be made to the employees not later than the next regular payday following the date the patron authorized the credit card payment.”].

2 Labor Code, § 351, subd. (a); *Henning v. Industrial Welfare Com.* (1988) 46 Cal.3d 1262, 1272.

3 29 U.S.C. § 201 et seq.

4 Cal. Const., art. XI, § 7 [“A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.”].

5 29 U.S.C. § 218(a); *Aguilar v. Ass'n for Retarded Citizens* (1991) 234 Cal.App.3d 21, 34 [“[F]ederal law does not control unless it is more beneficial to employees than the state law.”].

6 See, e.g., Labor Code, § 356; *Industrial Welfare Com. v. Superior Court of Kern County* (1980) 27 Cal.3d 690, 702 [“[I]n light of the remedial nature of the legislative enactments authorizing the regulation of wages, hours and working conditions for the protection and benefit of employees, the

statutory provisions are to be liberally construed with an eye to promoting such protection.”].

7 Labor Code, § 350 [defining *employee*]; Bus. & Prof. Code, §§ 7451, 7453; *Castellanos v. State of California* (2024) 16 Cal.5th 588 [upholding Proposition 22].

8 Labor Code, § 350, subd. (e) [“'Gratuity' includes any tip, gratuity, money, or part thereof that has been paid or given to or left for an employee by a patron of a business over and above the actual amount due the business for services rendered or for goods, food, drink, or articles sold or served to the patron.”].

9 *Searle v. Wyndham Int'l* (2002) 102 Cal.App.4th 1327, 1335 [emphasizing the customer's discretion as a defining characteristic of a gratuity]; Internal Revenue Bulletin, June 25, 2012 (Rev. Rul. 2012-18), available here.

10 *Industrial Welfare Com. v. Superior Court of Kern County* (1980) 27 Cal.3d 690, 731 [describing tips as a type of “non-wage benefit”].

11 See 26 U.S.C. § 3121(a)(12), (q).

12 26 U.S.C. § 224, added by Pub. L. No. 119-21 (2025) [federal income tax deduction of up to $25,000 per year in qualified tips; payments that customers do not make voluntarily, such as mandatory service charges, do not qualify].

13 Labor Code, § 510, subd. (a).

14 *Searle v. Wyndham Int'l* (2002) 102 Cal.App.4th 1327, 1335 [“Because the service charge is mandatory and because the hotel is free to do with the charge it as it pleases, the service charge is simply not a gratuity which is subject to the discretion of the individual patron.”].

15 This means that even if an employer distributes a portion of these funds to the employee, the employer must withhold Social Security and Medicare taxes, cannot claim a credit against tax obligations, and must include them as part of the employee's hourly wages. (Internal Revenue Bulletin, June 25, 2012 (Rev. Rul. 2012-18).)

16 See California Department of Tax and Fee Administration, *Publication 115: Tips, Gratuities, and Service Charges* [an amount is mandatory

"when the menus, brochures, advertisements, or other materials contain printed statements that notify customers that tips, gratuities, or service charges will, or may be added, to the bill"], available here; *Searle v. Wyndham Int'l* (2002) 102 Cal.App.4th 1327, 1335.

17 *O'Grady v. Merchant Exchange Productions, Inc.* (2019) 41 Cal.App.5th 771, 790 [a mandatory charge may be a "gratuity" under section 351; the statute's purpose "would not be served by allowing employers to take money intended for employees simply by saying the customer has paid a 'service charge'"]; accord, Labor Commissioner's Office, *Tips and gratuities* ["'Service charges' may be considered a 'gratuity' (tip) under Labor Code section 350 or not depending upon whether the specific facts show the charge is perceived and intended by a customer to be a gratuity."], available here.

18 See, e.g., Santa Monica Municipal Code, § 4.62.040 ["An Employer shall distribute all Service Charges in their entirety to the Employee(s) who performed services for the customers from whom the Service Charges are collected. No part of these amounts may be paid to Employees whose primary role is supervisory or managerial. No Employer or agent thereof shall deduct any amount from wages or other compensation required by this Chapter due an Employee on account of a Service Charge, or require an Employee to credit the amount of a Service Charge, in whole or in part, against and as a part of the wages or other compensation required by this Chapter due the Employee."], available here.

19 California's tax rules are consistent with the I.R.S. approach: a mandatory payment designated as a tip, gratuity, or service charge is included in the retailer's taxable gross receipts even if it is later paid to employees, while a true gratuity, voluntarily paid by the customer, is not, as long as the employer maintains proper records. (California Department of Tax and Fee Administration, *Publication 115: Tips, Gratuities, and Service Charges* ["For transactions beginning on and after January 1, 2015, when a retailer's records reflect amounts required to be reported to the IRS as non-tip wages, the amounts are deemed to be mandatory and includable in taxable gross receipts."], available here.)

20 29 C.F.R. § 531.55(b) [distributed service charges "may be used in their entirety to satisfy the monetary requirements of the Act"].

21 *Searle v. Wyndham Int'l* (2002) 102 Cal.App.4th 1327, 1334 [“The hotel is free to retain for itself the large premium, as well as the service charge, or to remit all or some of the revenue to its employees.”].

22 Labor Code, § 351, subd. (a) [“No employer or agent shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct any amount from wages due an employee on account of a gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer.”].

23 Labor Code, § 351, subd. (a) [“Payment of gratuities made by patrons using credit cards shall be made to the employees not later than the next regular payday following the date the patron authorized the credit card payment.”].

24 Labor Code, § 351, subd. (a) [“An employer that permits patrons to pay gratuities by credit card shall pay the employees the full amount of the gratuity that the patron indicated on the credit card slip, without any deductions for any credit card payment processing fees or costs that may be charged to the employer by the credit card company.”].

25 Labor Code, § 351, subd. (a); see Labor Commissioner's Office, *Tips and gratuities* [“Your employer can neither take your tips (or any part of them), nor deduct money from your wages because of the tips you earn.”], available here.

26 Cal. Code of Regs., tit. 8, § 11040, subd. 8 [“No employer shall make any deduction from the wage or require any reimbursement from an employee for any cash shortage, breakage, or loss of equipment, unless it can be shown that the shortage, breakage, or loss is caused by a dishonest or willful act, or by the gross negligence of the employee.”]. The same rule appears in the Industrial Welfare Commission's other industry wage orders.

27 *Leighton v. Old Heidelberg, Ltd.* (1990) 219 Cal.App.3d 1062, 1068 [“We reject plaintiff's contention that employer-mandated tip pooling constitutes a prohibited 'taking' by the employer within the meaning of section 351.”].

28 *Budrow v. Dave & Buster's of California, Inc.* (2009) 171 Cal.App.4th 875, 879 ["There are only two conditions created by section 351: the person must be an employee and the tip must have been 'paid, given or left for' the employee."].

29 *Budrow v. Dave & Buster's of California, Inc.* (2009) 171 Cal.App.4th 875, 879.

30 See Labor Code, §§ 350, subds. (a), (d) [defining *employer* and *agent* to include "every person other than the employer having the authority to hire or discharge any employee or supervise, direct, or control the acts of employees"], 351, subd. (a) [prohibiting employers and agents from receiving any gratuity paid to an employee by a patron].

31 *Jameson v. Five Feet Restaurant, Inc.* (2003) 107 Cal.App.4th 138.

32 See *Chau v. Starbucks Corp.* (2009) 174 Cal.App.4th 688, 692 [tip pooling permissible where shift supervisors spent 90% of their time doing the same work as baristas and the store had a general tip jar for the entire crew].

33 Labor Commissioner's Office, *Tips and gratuities* [section 351 "has been interpreted to allow for involuntary tip pooling so long as the tip pooling policy is not used to compensate the owner(s), manager(s), or supervisor(s) of the business, even if these individuals should provide direct table service to a patron or are in the chain of service to a patron"], available here.

34 *Etheridge v. Reins Internat. California, Inc.* (2009) 172 Cal.App.4th 908, 926 (conc. opn. of Croskey, J.) ["While [the employee] has not alleged a factual basis for a cause of action for an unfair or inequitable tip pool, it is my view that such a cause of action may be asserted in a proper case. That a tip pool, in order to be valid under Labor Code section 351, must be fair and equitable is, in my view, mandated by the rationale of Leighton. When that court concluded that the tips belong to all employees providing service to a patron, it stated that the tip was 'to be equitably distributed between them.' (*Leighton v. Old Heidelberg, Ltd.* (1990) 219 Cal.App.3d 1062, 1070.)"]; accord, Labor Commissioner's Office, *Tips and gratuities* ["In addition, the policy must be fair and reasonable."], available here.

35 *Etheridge v. Reins Internat. California, Inc.* (2009) 172 Cal.App.4th 908, 923 ["These policy reasons extend to mandatory tip pools which include employees who do not provide direct table service, but participate in the chain of service. Dishwashers and other kitchen staff are encouraged to give their best possible service as they know they will participate in the financial rewards if the customers are pleased with their work, even though the customers do not personally see them doing it. And a mandatory tip pool makes certain that these employees receive their fair share when the patrons are pleased with their service, but have no way to tip them directly."].

36 Labor Code, § 1182.12.

37 Labor Code, §§ 1474–1476 [fast food restaurant employees], 1182.14–1182.15 [covered health care employees]; Cal. Const., art. XI, § 7 [local ordinances].

38 29 U.S.C. § 203(m)(2)(A); 29 C.F.R. § 531.50.

39 Under the federal Fair Labor Standards Act, for example, an employer may pay a tipped employee a cash wage of as little as $2.13 per hour and claim a tip credit of up to $5.12 per hour against the $7.25 federal minimum wage, as long as the employee's tips actually make up the difference. (29 U.S.C. §§ 203(m)(2)(A), 206(a)(1); U.S. Department of Labor, *Fact Sheet #15: Tipped Employees Under the Fair Labor Standards Act*, available here.)

40 29 U.S.C. § 203(m)(2)(B); 29 C.F.R. § 531.52(b)(2) ["An employer may not allow managers and supervisors to keep any portion of an employee's tips, regardless of whether the employer takes a tip credit."].

41 Labor Code, § 351, subd. (a); *People v. Los Angeles Palm, Inc.* (1981) 121 Cal.App.3d 25, 35 ["Improperly crediting tips against a minimum wage skews employee benefits such as vacation or sick time; inaccurately reflects income for federal and state income tax purposes; avoids payment of additional wages for overtime and split shifts. That the employees of appellant received better than average tips, according to appellant, which are partially reported, does not alter the above factors. Such a practice clearly violates California law and constitutes an unfair business practice within the meaning of the statute."].

42 Labor Code, § 356 ["The Legislature expressly declares that the purpose of this article is to prevent fraud upon the public in connection with the practice of tipping and declares that this article is passed for a public reason and cannot be contravened by a private agreement."]; see also Civil Code, §§ 1668 ["All contracts which have for their object, directly or indirectly, to exempt any one from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law."], 3513 ["Any one may waive the advantage of a law intended solely for his benefit. But a law established for a public reason cannot be contravened by a private agreement."].

43 Labor Code, § 353 ["Every employer shall keep accurate records of all gratuities received by him, whether received directly from the employee or indirectly by means of deductions from the wages of the employee or otherwise."].

44 Labor Code, § 353 ["Such records shall be open to inspection at all reasonable hours by the department."].

45 Labor Code, § 354 ["Any employer who violates any provision of this article is guilty of a misdemeanor, punishable by a fine not exceeding one thousand dollars ($1,000) or by imprisonment for not exceeding 60 days, or both."].

46 Labor Code, § 351, subd. (b), added by Stats. 2025, ch. 93 (SB 648) ["The Labor Commissioner may investigate and issue a citation or file a civil action for gratuities taken or withheld in violation of this section."].

47 Labor Code, § 351, subd. (b) ["If a citation is issued, the procedures for issuing, contesting, and enforcing judgments for citations and civil penalties issued by the Labor Commissioner shall be the same as those set out in Section 1197.1, as appropriate."].

48 *Lu v. Hawaiian Gardens Casino, Inc.* (2010) 50 Cal.4th 592, 601 ["[Labor Code section 351] did not reflect a legislative intent to give employees a new statutory remedy to recover any misappropriated gratuities."].

49 Labor Code, § 355 ["The Department of Industrial Relations shall enforce the provisions of this article. All fines collected under this article shall be paid into the State treasury and credited to the general fund."].

50 Labor Code, §§ 61, 74, 98, subd. (a), 351, subd. (b), 355; see Stats. 2025, ch. 93 (SB 648).

51 See Cal. Civil Jury Instructions, No. 2100, *Conversion*.

52 *Lu v. Hawaiian Gardens Casino, Inc.* (2010) 50 Cal.4th 592, 603–604 [“To the extent that an employee may be entitled to certain misappropriated gratuities, we see no apparent reason why other remedies, such as a common law action for conversion, may not be available under appropriate circumstances.”].

53 Bus. & Prof. Code, § 17200 [“As used in this chapter, unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code.”].

54 Bus. & Prof. Code, § 17204.

55 See, e.g., *Application Group v. Hunter Group* (1998) 61 Cal.App.4th 881, 907 [“California courts have recognized that an employer's business practices concerning its employees are within the scope of section 17200.”]; *People v. Los Angeles Palm, Inc.* (1981) 121 Cal.App.3d 25, 33 [“That the Labor Code provides similar relief against unlawful labor practices cannot foreclose cumulative remedies under the Business and Professions Code if the alleged misconduct does indeed constitute an unfair business practice.”].

56 Labor Code, §§ 2699.3, subd. (a), 2699.5 [listing §§ 351 and 353 among the provisions subject to the Act's notice procedures].

57 See Labor Code, §§ 2698–2699.5; Labor Code, § 2699, as amended by Stats. 2024 (AB 2288, SB 92) [under the 2024 reform, most civil penalties are shared 65% to the state and 35% to aggrieved employees].

58 29 U.S.C. § 203(m)(2)(B); 29 C.F.R. § 531.52(b).

59 29 U.S.C. § 216(b) [“Any employer who violates section 203(m)(2)(B) of this title shall be liable to the employee or employees affected in the amount of the sum of any tip credit taken by the employer and all such tips unlawfully kept by the employer, and in an additional equal amount as liquidated damages.”].

60 Labor Code, § 98.6, subd. (a) ["A person shall not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter . . . or because the employee or applicant for employment has filed a bona fide complaint or claim or instituted or caused to be instituted any proceeding under or relating to their rights that are under the jurisdiction of the Labor Commissioner . . . or because of the exercise by the employee or applicant for employment on behalf of themselves or others of any rights afforded them."].

61 Labor Code, § 98.6, subd. (a).

62 Labor Code, §§ 98.6, subd. (b)(1), 1102.5, as amended by Stats. 2023, ch. 612 (SB 497) ["If an employer engages in any action prohibited by this section within 90 days of the protected activity specified in this section, there shall be a rebuttable presumption in favor of the employee's claim."].

63 Labor Code, § 98.6, subds. (b)(1), (b)(3).

64 Labor Code, § 98.7, subds. (a)(1), (g); Labor Commissioner's Office, *Tips and gratuities* ["If your employer discriminates or retaliates against you in any manner whatsoever . . . you can file a discrimination/retaliation complaint with the Labor Commissioner's Office. In the alternative, you can file a lawsuit in court against your employer."], available here.

65 Code Civ. Proc., § 339.

66 Code Civ. Proc., § 337.

67 Code Civ. Proc., § 338, subd. (c).

68 Bus. & Prof. Code, § 17208 ["Any action to enforce any cause of action pursuant to this chapter shall be commenced within four years after the cause of action accrued. No cause of action barred under existing law on the effective date of this section shall be revived by its enactment."].

69 Code Civ. Proc., § 340, subd. (a); Labor Code, § 2699.3; *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1199.

70 29 U.S.C. § 255(a).

71 Labor Code, § 98.7, subd. (a)(1) ["Any person who believes that they have been discharged or otherwise discriminated against in violation of any law under the jurisdiction of the Labor Commissioner may file a complaint with the division within one year after the occurrence of the violation. The one-year period may be extended for good cause."].