



TIP POOLING LAW IN CALIFORNIA: EMPLOYEE RIGHTS EXPLAINED

Mandatory tip pooling is legal in California within limits: tips are the employee's property, managers cannot share the pool, and tip credits are barred.

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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:¹



The people participating in the pool must be employees;²



The tips included in the pool must have been given to employees;³ and



The employer, the owner, the managers, and the supervisors cannot share in the tip pool.⁴

An employer will usually be considered to be in violation of California's labor laws if any of these rules are not followed.⁵ There are, however, a few exceptions.

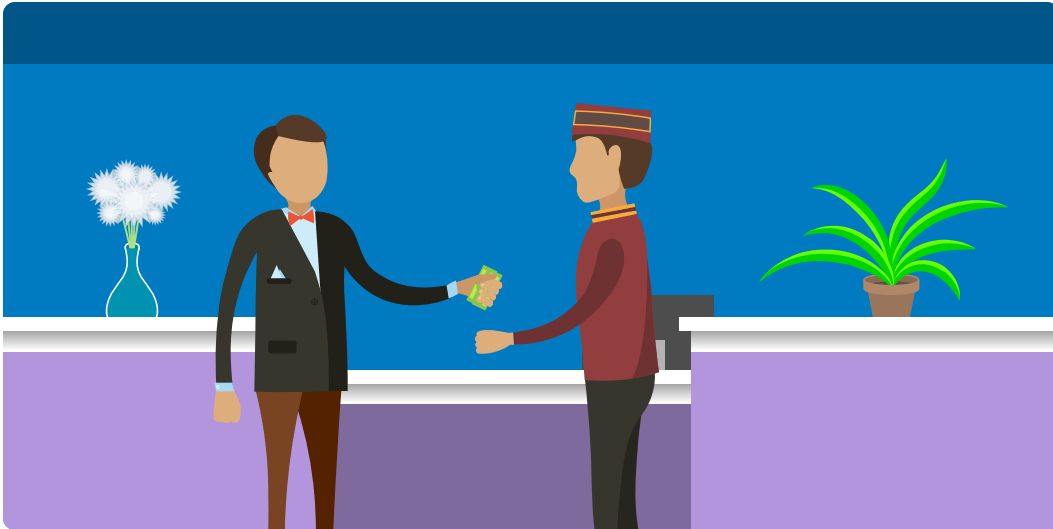
First, although this test generally excludes supervisors from sharing in the tip pool, at least one court has held that supervisors can join in the tip pool if they spend large portions of their time doing the same work as regular employees and the tips were likely left, in part, for them.⁶ Federal law, which applies alongside California's rules, is stricter on this point: it bars an employer and its managers and supervisors from keeping any part of employees' tips, including through a tip pool, though a manager or supervisor may keep tips a customer gives them for service they personally and solely provide.⁷

Second, 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.⁸ 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.

Finally, tip pools usually 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.⁹

The rest of this article will explore the intricacies of California's tip and gratuity laws.

What Is Considered a Tip or Gratuity?



A *tip* or a *gratuity* is money left for an employee by a customer above the actual amount due for the underlying good or service.¹⁰ Generally, a tip is left by a patron as a reward for good service and the amount is not regulated by the employer. These tip and gratuity rules apply to any business whose employees receive tips, not only restaurants; bars, hotels, salons, barbershops, and similar workplaces are covered as well.¹¹

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.¹²

A tip that meets these criteria is generally considered the exclusive property of the employee to whom it was paid,¹³ except in cases of tip pooling agreements or mandatory tip pooling policies.

1.1 Tips Are Not a “Wage”

Under California law, tips are not technically a “wage” paid by the employer.¹⁴ Although, for tax purposes, most types of tips are considered taxable income the same as regular wages.¹⁵

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*.¹⁶ 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.

1.2 Mandatory Service Charges Are Treated Differently from Tips

A mandatory service charge is an amount added automatically to a customer's bill, such as an automatic gratuity on a large party or a set banquet fee. These charges have traditionally been treated differently from voluntary tips: because the customer has no choice about paying them, they were generally regarded as belonging to the employer, who could keep them or distribute them as it saw fit.¹⁷

That treatment is not absolute. In 2019, a California Court of Appeal held that a mandatory “service charge” can itself be a gratuity under Labor Code section 351, depending on the circumstances. The label an employer places on the charge does not control the question; what matters is whether a reasonable customer would understand the charge to be payment for the employee's service. Where a charge functions that way, it must be distributed to the non-managerial employees who performed the service, and the employer cannot keep it.¹⁸

When a mandatory charge is a genuine service charge rather than a gratuity, it is treated differently from a tip in two respects. First, service charges have different tax consequences and presumptions even if they are later given to employees.¹⁹ Second, service charges can be counted toward minimum wage payments and the calculation of overtime wages.

Some local ordinances in California also require service charges to be paid in full to the employee that performed the services.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

Credit Card Charges Are the Employer's Responsibility



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 a 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

2.1 Employers Cannot Deduct Credit Card Fees

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.

2.2 Employers Cannot Charge Business Losses to Employees

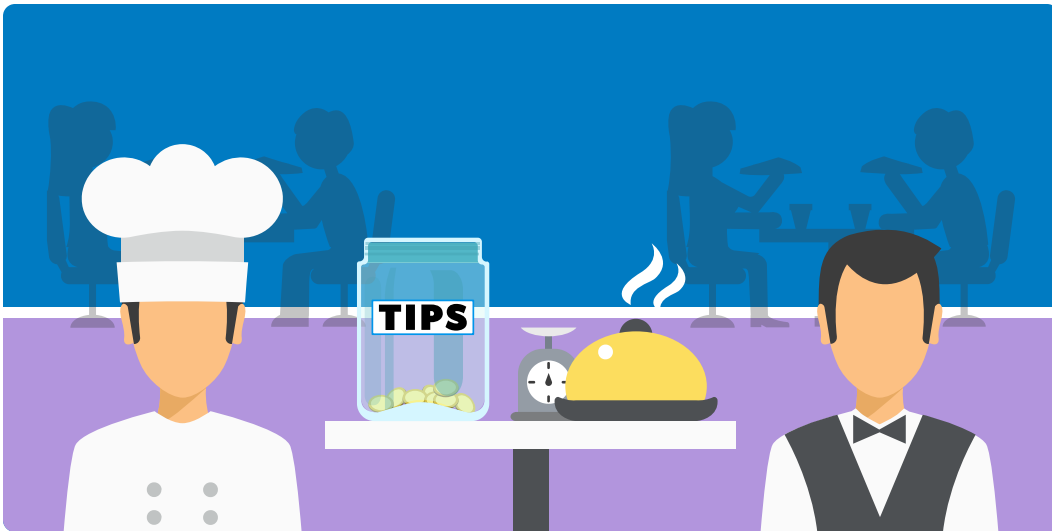
A related rule keeps employers from shifting their ordinary business losses onto workers. An employer generally cannot take money out of an employee's tips or wages to cover a customer who leaves without paying, a broken dish or piece of equipment, or a shortage in the cash register; California treats these as a cost of doing business that the employer must bear.²⁵ An employer may deduct for such a loss only if it can prove the loss was caused by the employee's dishonesty, a willful act, or gross negligence, a demanding standard that an honest mistake or accident does not meet.²⁶

2.3 The Employer's Record-Keeping Duties

Every employer is required to keep accurate records of all tips received, either directly or indirectly.²⁷ 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.²⁸ This requirement can help employees prove wrongdoing on the part of their employer in the event of a dispute.

Tips Cannot Be Credited against the Employee's Wages



In California, employees are entitled to be paid at least the minimum wage. In 2026, the minimum wage in California is \$16.90 per hour.²⁹

In some states, and under federal law, employers are allowed to credit tips toward the employee's minimum wage.³⁰ 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.³¹

California law, which provides stricter protections for the employee, expressly forbids tip credits.³² Thus, tip credits are illegal in California, and any employment contract allowing tip credits is illegal.³³

The practical result is straightforward: a tipped employee in California must be paid at least the full minimum wage for every hour worked, and any tips the employee receives are on top of that pay, never a substitute for it.³⁴

Legal Consequences for Tip and Gratuity 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 60 days, or both.³⁵

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

4.1 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 employer for violating their tip rights.

In 2010, however, the California Supreme Court held that employees do *not* have a private cause of action under section 351 itself to recover misappropriated tips.³⁶ Public enforcement of the gratuity statutes rests with the state.³⁷ Since January 1, 2026, section 351 has also expressly authorized the Labor Commissioner to investigate gratuities that are taken or withheld and to issue a citation or file a civil

action to recover them, using the same citation procedure that applies to minimum wage violations.³⁸

Nevertheless, employees still have several options to recover money from their employer. Those options include:



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 the Labor Commissioner can pursue the withheld tips through a citation or a civil action.³⁹



Conversion Lawsuit. "Conversion" is a type of lawsuit that alleges someone interfered with another person's property rights.⁴⁰ If an employee's tips are wrongfully withheld, they can file a lawsuit alleging conversion.⁴¹



Unfair Business Practices Lawsuit. California's Unfair Competition Law (the "UCL") prohibits unlawful, unfair, or fraudulent business practices.⁴² Any person who has lost money as a result of those acts can file a lawsuit under the UCL.⁴³ California courts have held that this permits employees to file lawsuits against employers who violate the Labor Code.⁴⁴



PAGA Claim. California's Labor Code authorizes employees to file lawsuits against their employers to recover civil penalties. This statute is called the Private Attorneys General Act, and lawsuits brought under it are commonly referred to as "PAGA claims." Importantly, several steps need to be followed before an employee is authorized to bring a PAGA claim.⁴⁵

4.2 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 their right to their tips and gratuities.⁴⁶

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.⁴⁷ This means that an employee cannot be punished, fired, or treated unfairly for exercising these rights. If an employer takes an adverse action against an employee within 90 days of the employee's protected activity, the law presumes the action was retaliatory, and the employer must come forward with a legitimate, nonretaliatory

reason; a prevailing employee may also recover a civil penalty of up to \$10,000 for each violation.⁴⁸

4.3 Deadline to File

In many cases, it is important to act quickly, because claims to recover withheld tips 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.⁴⁹ 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.⁵⁰



Conversion Claims. A lawsuit for conversion (mentioned above) must be filed within *three years* of the violation.⁵¹



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.⁵²



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.⁵³



Retaliation Complaints. An employee who was retaliated against for asserting their tip rights and who files a complaint with the Labor Commissioner must generally do so within *one year* of the retaliatory act.⁵⁴

References

- 1 *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.”].
- 2 *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.”].
- 3 *Budrow v. Dave & Buster’s of California, Inc.* (2009) 171 Cal.App.4th 875, 879.
- 4 See Labor Code, §§ 350, subds. (a) [defining *employer*], (d) [defining *agent* as “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 [prohibiting employers and agents from receiving any gratuity paid to an employee by a patron].
- 5 See Labor Code, § 351.
- 6 See *Chau v. Starbucks Corp.* (2009) 174 Cal.App.4th 688, 692 [tip pooling permissible where shift supervisors who spend 90% of their time doing the same work as baristas, and the store had a general tip jar for the entire crew].
- 7 29 U.S.C. § 203(m)(2)(B); 29 C.F.R. § 531.52, subd. (b)(2) [a “manager” or “supervisor” is defined by the executive-employee duties test].
- 8 *Etheridge v. Reins Internat. California, Inc.* (2009) 172 Cal.App.4th 908, 926 [“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.)”].

9 *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.”].

10 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.”].

11 See Labor Code, § 350, subd. (f) [“‘Business’ means any business establishment or enterprise, regardless of where conducted.”].

12 *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](#) .

13 Labor Code, § 351.

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

15 See 26 U.S.C. § 3121(a)(12), (q).

16 Labor Code, § 510, subd. (a).

17 *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.”].

- 18 *O'Grady v. Merchant Exchange Productions, Inc.* (2019) 41 Cal.App.5th 771, 790 [a mandatory 21 percent “service charge” added to banquet bills could constitute a gratuity under section 351 where customers reasonably understood it to be payment for the service staff, and rejecting the view that a service charge can never be a gratuity as a matter of law].
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- 19 An optional, voluntarily paid gratuity is not part of the retailer's taxable gross receipts, but a mandatory payment designated as a tip, gratuity, or service charge is included in taxable gross receipts even if it is later paid out to employees. Since January 1, 2015, when a retailer keeps records consistent with reporting the amounts as tip wages for I.R.S. purposes, those amounts are presumed to be optional and not subject to tax. (See California Dept. of Tax and Fee Administration, *Publication 115: Tips, Gratuities, and Service Charges*, [available here](#) ²⁰.)
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- 20 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](#) ²¹.
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- 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.”].
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- 22 Labor Code, § 351 [“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.”].
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- 23 Labor Code, § 351 [“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.”].
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- 24 Labor Code, § 351 [“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.”].
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- 25 Labor Code, § 351 [barring deductions from wages “on account of a gratuity”]; Labor Code, §§ 221, 224; *Kerr’s Catering Service v. Dept. of Industrial Relations* (1962) 57 Cal.2d 319 [business losses such as cash shortages must be borne by the employer as an expense of management, not charged to the employee].
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- 26 Cal. Code of Regs., tit. 8, § 11050, subd. 8 [Wage Order 5, covering the restaurant and hospitality industry: “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.”].
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- 27 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.”].
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- 28 Labor Code, § 353 [“Such records shall be open to inspection at all reasonable hours by the department.”].
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- 29 See Labor Code, § 1182.12, subd. (c); California Dept. of Industrial Relations, Minimum Wage, [available here](#) ²⁹.
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- 30 See 29 U.S.C. § 203(m); 29 C.F.R. § 531.50.
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- 31 See, e.g., *Kilgore v. Outback Steakhouse* (6th Cir. 1998) 160 F.3d 294, 298 [“The tip credit allows employers to include in its calculation of a ‘tipped employee’s’ wage the amount that an employee receives in tips up to fifty percent of the minimum wage . . . ”].
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- 32 Labor Code, § 351; *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.”].
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- 33 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.”].
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- 34 Labor Code, §§ 351, 1182.12.
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- 35 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.”].
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- 36 *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.”].
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- 37 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.”].
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- 38 Labor Code, § 351, subd. (b), as added by Stats. 2025, ch. 93 (SB 648) [Labor Commissioner may investigate and issue a citation or file a civil action for gratuities taken or withheld, under the procedures in Labor Code, § 1197.1].
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- 39 Labor Code, §§ 61, 74, 98, subd. (a), 351, subd. (b), 355.
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- 40 See Cal. Civil Jury Instructions, No. 2100, *Conversion*.
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- 41 *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.”].
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- 42 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.”].
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- 43 Bus. & Prof. Code, § 17204.
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- 44 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.”].
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- 45 See Labor Code, §§ 2698–2699.5, as amended by Stats. 2024 (AB 2288, SB 92).
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- 46 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 . . . 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, made a written or oral complaint that they are owed unpaid wages . . . or because of the exercise by the employee or applicant for employment on behalf of themselves or others of any rights afforded them.”].
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- 47 Labor Code, § 98.6, subd. (a).
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48	Labor Code, § 98.6, subds. (b)(1) [90-day rebuttable presumption], (b)(3) [civil penalty], as amended by Stats. 2023, ch. 612 (SB 497).
49	Code Civ. Proc., § 339.
50	Code Civ. Proc., § 337.
51	Code Civ. Proc., § 338, subd. (c).
52	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.”].
53	Code Civ. Proc., § 340, subd. (a); <i>Amaral v. Cintas Corp. No. 2</i> (2008) 163 Cal.App.4th 1157, 1199.
54	Labor Code, § 98.7, subd. (a)(1).