



DEPARTMENT OF

# LABOR

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**Hagåtña, Guam** – Some businesses may be supplementing the minimum wage of their service staff with tips and/or service charges. “This inconsistency in the method service industry staff are paid was brought to my attention by business owners,” said Guam Department of Labor Director David Dell’Isola. This is not legal according to Guam’s labor laws.

In reviewing the Attorney General’s opinion from 2016, Opinion Memorandum DOL 16-0423, and during discussions with U.S. Department of Labor, Guam Hospitality Restaurant Association and other wage and hour experts, minimum wage may not be supplemented. This means, under Title 22 GCA under section 3104 (f), tips cannot be used as wages. Service charges also cannot be directly used to supplement minimum wage, meaning service charges cannot be utilized as tips and added to wages.

“In conclusion, everyone in the service industry on this island is to be paid at least \$8.25 an hour, Guam’s current minimum wage, for hours worked during each pay period. There are no exceptions and no substitutes for that -- wait staff and bartenders included,” Dell’Isola said.

The difference between tips and service charges comes down to voluntary versus mandatory. A tip is given by the customer at will, and the amount is determined by the customer. A service charge is a set amount determined by the establishment and must be paid.

Bars and restaurants must treat service charges as income, and the monies become part of the employer’s gross receipts. The employer has the right to give all, some or none of the service charge to the server, but must treat whatever is given to the employee as wages, not as tip income, for tax purposes.

“They may elect to keep it and use that along with other revenue to pay wages. They may also elect to pay it out in addition to the minimum wage like commission, and it is taxed to the employee accordingly. This money given to employees is treated as regular wages. Tips however are the sole property of the tipped employee, and it is the employees’ responsibility to claim the income and pay the proper taxes,” Dell’Isola said.

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An employer has no right to any part of it, except for credit card transaction fees. If a tip is given on a credit card, the employer is only allowed to deduct the transaction fees to the establishment.

Employers have the option to pay out credit card tips at closing, but payment must be made no later than the next regular payday and may not be held while the employer is awaiting reimbursement from the credit card company.

Tip pooling is allowed on Guam, but it is a pre-agreed upon process with the employees. The monies are distributed among staff who customarily and regularly receive tips. Employers may not assign non-tipped employees, those who do not typically receive tips, to a tip pool, including employers.

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