

## Tip Pooling, which employees can participate and how is it done properly

- If you call it a tip, service charge or gratuity it must go to the servers, service bartenders or service personnel.
- No member of management may participate in any tip pool. Tips can only go to servers, service bartenders or other service personnel. (Definition is below)
- Administrative or House Charges are permitted, however the contract must contain written Safe Harbor stating that these fees are not service charges, tips or gratuities and that they do not go to the wait staff, service bartenders or service personnel. Any administrative fee is subject to meals tax collections.

“Wait staff employee”, a person, including a waiter, waitress, bus person, and counter staff, who: (1) serves beverages or prepared food directly to patrons, or who clears patrons’ tables; (2) works in a restaurant, banquet facility, or other place where prepared food or beverages are served; and (3) who has no managerial responsibility.

“Service bartender”, a person who prepares alcoholic or nonalcoholic beverages for patrons to be served by another employee, such as a wait staff employee.

An employer may administer a valid tip pool and may keep a record of the amounts received for bookkeeping or tax reporting purposes. {If the employer is mandating a tip pool, then they must inform the participants in writing (this can be accomplished with a form that states what the person will be paid)}

### Clarification of law passed in 2021

1). The Massachusetts legislature passed, and the Governor signed a new law that amends the tip law by changing the definition of a wait staff employee who can receive tips and share in tip pools. One change **allows an employee to work as a wait staff employee some days even if the employee works other days in a different position that includes managerial responsibilities.** To comply, employers need to draw a bright line between the positions by training and supervising such employees to insure they have no managerial responsibilities and exercise none on days they work as a wait staff employee.

2). Another change expands the definition of a wait staff employee to include an employee in a quick service restaurant who is (i) part of a team of counter staff and (ii) prepares or serves food or beverages. While limited, the change is significant insofar as it allows such an employee whose contribution is the preparation, but not service, of food or beverages to be included among wait staff.

**The practice of tip pooling is legal in Massachusetts if it complies with the following:**

1. Employees may voluntarily pool their tips or the employer may require them to do so.
2. Only wait staff employees and service bartenders may be part of a tip pool and receive any distribution from the pool.
3. Wait staff employees include waiters, waitresses, bus persons, persons in a quick service restaurant who prepare or serve food or beverage as part of a team, counter employees who serve beverages or prepared food directly to patrons and who have no managerial responsibility during a day in which the employee performs such work.
4. An employee may not be part of a pool or receive any distribution from a pool for work performed during a day in which the employee had any managerial responsibility.
5. An employee's distribution from the pool for each shift coupled with his/her hourly wage must satisfy the minimum wage requirements for each hour of the shift.
6. The employer may administer the tip pool.
7. The amount of a distribution from the pool must be in proportion to the service performed by the employee receiving the distribution.
8. The distribution due to each employee must be paid no later than the following pay day.