



Please contact any of the attorneys in our [Labor and Employment Group](#) if you have any questions regarding this alert.

Michael J. Volpe
mjvolpe@Venable.com
212.808.5676

Kristine A. Sova
kasova@Venable.com
212.808.5662

Nicholas M. Reiter
nmreiter@Venable.com
212.370.6296

New York Department of Labor Clarifies that Employers Have Until Next Regularly Scheduled Pay Day to Pay Out Employees' Credit Card Tips

Hospitality industry employers may breathe a sigh of relief following a recent statement from the New York Department of Labor. On June 16, 2011, the Department rescinded its prior opinion letter, RO-08-0032, under which employers were required to pay out the proceeds from credit card tips to employees before the start of the next work day. The statement eases several burdens for hospitality industry employers and addresses the Department's previously inconsistent stance regarding credit card tip disbursements.

Under the new guidance, employers may wait until the next regularly scheduled pay day to distribute payments related to credit card tips. The new policy eliminates the need to keep large amounts of cash on hand for nightly pay outs to employees and permits employers to incorporate credit card tip payments into their payroll checks. Additionally, employers are no longer placed in the sometimes difficult position of paying out credit card tips before customers' charges are processed and deposited into the employers' bank accounts.

Upon request from an employee, an employer may also hold an employee's cash tips for disbursement at the end of the regularly scheduled pay period. Employers should note, however, that the hold-over of cash tips must be voluntary, and an employer is prohibited from requiring the hold-over of cash tips as a pre-condition of employment or condition of continued employment. The Department also reiterated the need for employers to comply with all recordkeeping requirements, including daily records of each employee's tips and a breakdown of tips and wages earned within each employee's wage statement.

This new policy reflects a significant shift in the Department's approach to credit card tip disbursements and will facilitate employers' efforts to streamline the payroll process. As always, employers should consult with legal counsel prior to implementing any changes to their payroll policies.

The full text of the Department's statement rescinding its prior opinion letter may be found [here](#).

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