



New York State Department of Labor
David A. Paterson, Governor
M. Patricia Smith, Commissioner

September 23, 2008

[REDACTED]

Re: Request For Opinion
Tips (§196-d)
File No. RO-08-0065

Dear [REDACTED]:

This letter is written in response to your letter of May 28, 2008 in which you state that your employer has informed you that they will begin charging their wait staff fees charged for processing tips paid for via charge cards. You ask how these deductions must be documented and the limits that the employer is permitted to deduct.

Labor Law §195(3) states that every employer must provide all employees with a statement with every payment of wages listing, among other things, all deductions made. The Department interprets this to mean that any deductions made, including deductions from tips, must be included in such wage statement. Therefore, the answer to your first question is that the total of all deductions made for processing of tips paid by credit card must be set forth in the employees' weekly wage statements.

As to your second question: according to Labor Law §196-d, an employer may not "retain any part of a gratuity or of any charge purported to be a gratuity for an employee." In other words, an employer may not keep any part of an employee's tips. The Department recognizes, however, that it is a common practice for restaurant customers to pay for both meals and tips with credit cards. The Department also recognizes that credit card companies charge businesses a fee based on a percentage of the total amount charged. Based on these circumstances, the Department of Labor has interpreted Labor Law §196-d to mean that the amount of a credit card charge deemed to be a tip may be reduced by the percentage charged by the credit card company. For example, if the customer pays a \$2.00 tip via credit card, and the credit card company charges a 2% fee (i.e. \$0.04) for processing such transaction, the employer may lawfully retain such processing fee and remit to the employee \$1.96 rather than the full \$2.00. Under no circumstances, however, may the employer retain any part of the tips paid in cash, nor any portion of a tip paid by credit card that is greater than the amount charged by the credit card company. If, for example, an employee receives, during a single week, \$100.00 in

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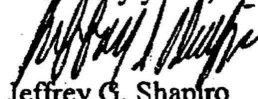
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tips paid via cash and \$100.00 in tips paid via credit card, and the credit card company charges a 2% fee, the employer must remit to the employee the full \$100.00 in cash tips and no less than \$98.00 of the credit card tips.

This opinion is based on the information provided in your letter of May 28, 2008. A different opinion might result if any facts provided have been inaccurately stated, or if there are other relevant facts that have not been disclosed. If you have any further questions, please feel free to contact me.

Very truly yours,



Jeffrey G. Shapiro
Associate Attorney

JGS: jc

cc: Carmine Ruberto