

*Dave and Buster's prevails in wage claim over tips*

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Dave and Buster's of California, Inc., recently prevailed in a wage claim brought by a very short term employee who objected to having to share tips with his coworkers. Aaron Budrow worked for Dave and Buster's for approximately three months as a cocktail server. Dave and Buster's requires servers to contribute one percent of their gross sales to bartenders and other employees. Mr. Budrow claimed that this violated Labor Code section 351 because the bartenders and other employees were not providing direct table service to customers.

Dave and Buster's moved for summary judgment, asking the trial court to grant judgment in its favor without having to proceed to a trial. Courts do not grant motions for summary judgment unless there are no factual disputes. The trial court concluded that there were no factual disputes and that Dave and Buster's tip policy did not violate the law, and the trial court granted Dave and Buster's motion.

Mr. Budrow appealed, but the appellate court agreed with the trial court. The appellate court explained that Labor Code section 351 provides that employers cannot require their employees to share tips with their employers. Labor Code section 351 does not make any distinction between "direct" and "indirect" table service. In fact, the section does not make any distinctions between jobs performed by employees accepting tips; it merely forbids employers from taking any part of those tips.

The court further explained that it was a widespread industry practice for bartenders to share in the tip pools. The court reasoned that customers leaving tips would want to provide tips to the bartenders who mixed their drinks for the servers to deliver.

Employers who operate restaurants, bars, arcades, and other establishments with tipping policies should periodically review their policies to ensure that they, like Dave and Buster's, are complying with the applicable laws.